

Know the Law—Confidentiality, Mandated Reporting, and Duty to Warn

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Legal mandates and ethical principles are the cornerstone of responsible mental health counseling practice. In Washington State, where this author will practice, mental health professionals operate within a legal framework governed by statutes and regulations. The Washington Administrative Code (WAC) and the Revised Code of Washington (RCW) serve as regulatory guidelines for mental health professionals. Among these, specific statutes safeguard the well-being and autonomy of individuals seeking mental health counseling. This paper examines the concepts of confidentiality, mandated reporting, and duty to warn—three central principles that promote ethical conduct and protect vulnerable populations.

Confidentiality

Confidentiality is a fundamental ethical and legal principle in mental health counseling. It allows clients to share personal information in a safe and private setting, fostering a strong therapeutic alliance. Without confidentiality, clients may withhold critical information, which could hinder the counseling process and stifle growth. This principle is essential for addressing sensitive topics and encouraging clients to seek help.

In 2009, Washington State passed Senate Bill 5931, amending RCW 5.60.060 to strengthen client confidentiality. Before this change, mental health counselors could be compelled to testify in court proceedings, and communications between counselors and clients were not protected by testimonial privilege under state law. Federal law provided for client-counselor privilege, but state law lagged behind. The new legislation established that licensed mental health counselors could not be compelled to testify unless specific exceptions applied.

These exceptions include cases where the client consents to disclosure, files charges against the counselor, or where the counselor is subpoenaed under the Uniform Disciplinary Act. Counselors are also required to breach confidentiality in cases involving mandatory reporting or imminent danger to the client or the public. Importantly, counselors are not required to provide specific details of the client's statements, only to acknowledge the presence of suicidal or homicidal thoughts.

Another landmark case shaping confidentiality in Washington State is *Magney v. Truc Pham* (2020). The case centered on the question of whether marriage and family counseling records could be disclosed in a lawsuit. The Magney family's infant son was misdiagnosed with cancer, and his parents attended marriage counseling as they coped with the emotional distress. The defense sought access to the family's counseling records, arguing they were relevant to the emotional distress claims. Historically, Washington courts, as seen in *Lodis v. Corbis Holdings, Inc.* (2013), have permitted the disclosure of therapy records when non-economic damages are at issue. However, the Washington Supreme Court ruled that marriage counseling records were not automatically admissible. The Magney decision emphasizes the protection of family counseling records and underscores the complexity of confidentiality in therapeutic contexts.

Duty to Warn & Duty to Protect

The duty to warn and protect is a critical component of mental health practice, grounded in the ethical principles of beneficence and nonmaleficence. Counselors have a legal and ethical obligation to protect both their clients and third parties from harm. While confidentiality is essential, the duty to warn requires counselors to breach it when there is a clear, foreseeable threat to others. Washington State has grappled with the scope of this duty, with key court cases helping to clarify when and how mental health professionals must act.

One of the most significant cases related to the duty to warn is *Petersen v. State of Washington* (1983). This case involved a patient released from Western State Hospital following a court-ordered 14-day stay. Shortly after his discharge, the patient caused a serious car accident. The injured driver sued the State of Washington, arguing that the hospital had a duty to warn potential victims. The court's ruling significantly broadened the duty to warn, establishing that mental health facilities must warn all foreseeable victims, even if they are unnamed. This precedent was later refined by RCW 71.05.120, which limits the duty to warn to situations where the client has made a specific threat of physical violence against an identifiable person or persons.

The duty to warn was expanded in *Volk v. DeMeerleer* (2016), a landmark case that shifted the legal landscape for outpatient mental health providers. Jan DeMeerleer, a client of Dr. Howard Ashby, killed his ex-fiancée, Rebecca Schiering, and her son before taking his own life. DeMeerleer had a history of bipolar disorder and had been under Dr. Ashby's care for nine years. However, during his final session, he did not express intentions to harm Schiering or her family. Following the tragedy, Schiering's family sued Dr. Ashby and his clinic for failing to meet the standard of care, arguing that Ashby had a duty to warn the victims.

The Washington Supreme Court ruled in favor of the plaintiffs, finding that the duty to warn extends to all foreseeable victims, even if they are not specifically identified. The court reasoned that mental health professionals who have a "special relationship" with their clients—as defined in the Restatement (Second) of Torts § 315—are obligated to take reasonable steps to protect potential victims. This decision heightened the duty to warn for outpatient providers, requiring them to assess the potential for harm even in the absence of explicit threats. For

counselors in private practice, Volk underscores the importance of ongoing risk assessment and the careful documentation of client sessions.

Reporting Procedures

Washington State law mandates that mental health professionals report suspected child or elder abuse. Reporting procedures are governed by Chapter 246-16 WAC and Chapter 26.44 RCW, which establish clear protocols for identifying, documenting, and reporting abuse. Counselors are classified as "mandatory reporters," which requires them to report suspected abuse even if they have limited evidence.

Child Abuse or Neglect

When a counselor suspects child abuse or neglect, they must contact 911 if the child is in immediate danger. Otherwise, they are required to call either local law enforcement or the Department of Social and Health Services (DSHS) Child Protective Services (CPS) at 1-866-END-HARM. Reports should include the child's name, age, location, parent or guardian information, details about the suspected abuser, and the nature of the incident. If some information is missing, the report must still be filed. Counselors are required to report abuse within 20 days of suspicion under WAC 246-809-060.

Vulnerable Adult Abuse or Neglect

The process for reporting elder or vulnerable adult abuse depends on the individual's living situation. If the adult resides in an adult family home, boarding home, or nursing home, counselors must contact the Complaint Resolution Hotline at 1-800-562-6078. If the adult lives at home or in a non-residential facility, reports should be made to Adult Protective Services (APS) by calling 1-877-743-6277 or using the DSHS online reporting system. In cases of

suspected sexual or physical assault, local law enforcement must also be notified. As with child abuse, counselors must act within 20 days of becoming aware of the abuse.

Practical Implications

The principles of confidentiality, duty to warn, and mandated reporting are essential to ethical practice in mental health counseling. Washington State court cases like *Volk v. DeMeerleer* highlight the complexities of balancing confidentiality with the duty to protect third parties. The duty to warn requires counselors to carefully assess client risk, anticipate foreseeable harm, and document all decision-making processes. This dual responsibility to uphold confidentiality while protecting potential victims poses an ethical dilemma for counselors.

The case of *Volk* will inform this author's future clinical practice. As a mental health counselor in Washington State, I will need to develop sound judgment to determine when to breach confidentiality and warn potential victims. It is essential to stay informed about changes in case law, as new decisions could alter the scope of duty to warn and client confidentiality. The stakes are high: failure to act could result in civil liability, professional sanctions, and harm to the community.

The reporting of child and elder abuse requires counselors to be vigilant, proactive, and detail-oriented. Counselors must recognize the signs of abuse, follow state reporting protocols, and understand that their duty to report supersedes confidentiality. This responsibility ensures that vulnerable populations are protected from harm. For mental health counselors practicing in the state of Washington, remaining informed about the nuances of WAC, RCW, and relevant case law is vital for maintaining ethical practice and promoting client welfare.

The principles of confidentiality, mandated reporting, and duty to warn form the foundation of ethical practice in mental health counseling. Washington State laws, such as RCW 5.60.060, RCW 71.05.120, and WAC 246-16, outline clear guidelines for how mental health professionals should navigate these principles. Court cases like *Petersen v. State of Washington* and *Volk v. DeMeerleer* demonstrate how legal interpretations evolve, sometimes expanding counselors' obligations to warn foreseeable victims. As a future counselor, it will be critical to remain informed of changes in case law, document clinical decisions thoroughly, and act with prudence when facing ethical dilemmas. By balancing confidentiality with the duty to protect, counselors promote the well-being of clients, safeguard the community, and uphold the integrity of the counseling profession.

References

American Law Institute. (1965) *Restatement of the law, second, torts 2d*. American Law Institute Publishers.

Lodis v. Corbis Holdings, Inc., 292 P.3d 779, 172 Wn. App. 835, 172 Wash. App. 835 (Wash. Ct. App. 2013). <https://casetext.com/case/lodis-v-corbis-holdings>

Magney v. Truc Pham, 195 Wash. 2d 795, 466 P.3d 1077 (Wash. 2020).
<https://casetext.com/case/magney-v-pham>

Peterson v. State, 100 Wn.2d 421 (1983). <https://law.justia.com/cases/washington/supreme-court/1983/49490-8-1.html>

Sonkiss, J., & Jones, J. C. W. (2011). Duties to protect and control. *Journal of the American Academy of Psychiatry and the Law*, 39(2), 268–270.

Substitute Senate Bill 5931, S.B. 5931, 61st Legisl. (2009).
<https://lawfilesexternal.wa.gov/biennium/2009-10/Pdf/Bills/Senate%20Passed%20Legislature/5931-S.PL.pdf>

Volk v. DeMeerleer, 187 Wn.2d 241 (2016). <https://casetext.com/case/volk-v-demeerleer-3>

Wash. Admin. Code Ann. §246-809.

<https://app.leg.wa.gov/wac/default.aspx?dispo=true&cite=246-809&full=true&pdf=true>

Wash. Rev. Code Ann. §18.224.040

Washington State Department of Social and Health Services (2018). *Protecting the abused and neglected child: A guide for recognizing & reporting child abuse & neglect* (Report no. 22-163). <https://www.dcyf.wa.gov/sites/default/files/pubs/22-163.pdf>