

**Assignment 4.1: Navigating the Complexities of Confidentiality, Mandatory Reporting, and
Duty to Warn for Colorado Counselors**

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Introduction

For Colorado counselors, the ethical and legal landscape governing client confidentiality is not a clear set of rules but a complex and often contradictory field of practice. This paper synthesizes and reflects upon the intricate yet sometimes conflicting demands of Colorado state law, the American Counseling Association (ACA) Code of Ethics (2014), and organizational policies from Mental Health Partners (now Clinica Family Health & Wellness) regarding confidentiality, privileged communication, mandatory reporting of abuse and neglect, and the duties to warn and protect. The core challenge for practitioners lies in navigating the fundamental ethical duty to protect client privacy and the legal mandates that breach that confidentiality in support of public safety.

While establishing trust through guaranteed privacy is the bedrock of therapy, counselors must also explain the limits of this promise. For example, these limits are defined by legally mandated duties to report abuse and prevent foreseeable harm. In Colorado, statutes specifically override confidentiality in cases of suspected child abuse, creating a clear legal imperative. However, the practical application is fraught with difficulty. Counselors face ethical gray areas when determining what constitutes “suspicion,” assessing “foreseeable risk,” or when internal policies, such as those requiring supervisory consultation before reporting, conflict with the legal expectation of immediacy. This analysis reveals that the most significant professional risks arise not from a lack of knowledge, but from the immense challenge of interpreting and acting upon

these competing obligations in real-time. Ultimately, effective practice requires a balancing act between upholding ethical commitments to the client and fulfilling statutory duties to the public.

Confidentiality, Mandated Reporting, and Duty to Warn for Colorado Counselors

The professional counseling relationship is founded on trust, which is regarded as the cornerstone of the profession (ACA, 2014, Sections A & B, Introduction). Counselors operate under a dual mandate: an ethical responsibility to foster client welfare and a legal responsibility to practice within the boundaries of state law (ACA, 2014, Section C, Introduction; Section C.1; ACA, 2014, §I.1.c.). For counselors in Colorado, understanding the intersection of the ACA Code of Ethics (2014) and the Colorado Statutes is crucial, particularly concerning issues of privacy, mandatory reporting, and the duty to warn.

Confidentiality and Legal Exceptions

Confidentiality is an ethical concept that represents the promise a counselor makes to a client that information shared during counseling will be protected from disclosure without consent (ACA, 2014, Section B, Introduction; Remley & Herlihy, 2025). This concept is rooted in the individual's right to privacy, allowing clients to feel safe enough to discuss the most intimate details of their lives (Remley & Herlihy, 2025). Confidentiality is a cornerstone of therapy, but it is never absolute. From the outset of treatment and throughout the process, counselors are ethically obligated to inform clients of specific limitations (ACA, 2014, §A.2.b.; ACA, 2014, §B.1.d.). The most common limitations arise from legal mandates and the duty to prevent serious, foreseeable harm. When a situation requires breaching confidentiality, counselors must adhere to the "minimal disclosure" standard, revealing *only* the information essential to achieve the protective purpose (ACA, 2014, §B.2.e.). A key example is the handling

of a client's communicable, life-threatening disease (such as HIV). The ACA Code of Ethics (2014, §B.2.a.) permits disclosure to protect identifiable third parties at risk. However, applying this to HIV/AIDS is now complex; medical advances have made it a manageable chronic illness, challenging the "life-threatening" criterion.

This ethical ambiguity is further complicated by conflicting legal guidance. While state laws often mandate reporting infectious diseases like HIV to public health authorities, Colorado statutes, for instance, prohibit discrimination based on a communicable disease in foster care placements. Navigating these overlapping and sometimes contradictory ethical and legal sources is an ongoing challenge for counselors.

Colorado law provides specific protections and exemptions concerning confidential records related to children and youth. For instance, reports of child abuse or neglect, along with any identifying information, are explicitly deemed confidential and not public information (C.R.S., 2024, §19-1-307(1)(a)). The violation of these confidentiality provisions constitutes a civil infraction (C.R.S., 2024, §19-1-307(1)(c))! Furthermore, records related to adoption and relinquishment proceedings are also confidential, requiring a court order for inspection (C.R.S., 2024, §19-1-309).

Another crucial legal exception occurs when a counselor is ordered by court mandate. If a counselor is ordered by a court to release confidential or privileged information, they are legally required to comply (ACA, 2014, §B.2.d.; Remley & Herlihy, 2025). When faced with a court order, counselors must first try to obtain written client consent or take steps to limit the disclosure as narrowly as possible due to the potential harm to the client and the therapeutic

relationship (ACA, 2014, §B.2.d.). Adhering to a judge's order protects the counselor from charges of wrongdoing related to privacy breaches (Remley & Herlihy, 2025).

Privileged Communication: The Legal Distinction

Confidentiality is often confused with privileged communication. Privilege is a legal concept established by State statute that protects clients from having their communications disclosed in a court of law without their permission (Remley & Herlihy, 2025). The privilege is held by the client, not the counselor (Remley & Herlihy, 2025). In Colorado, the statutory protection afforded by privilege is explicitly waived in instances of mandatory reporting:

The incident of privileged communication between patient and physician... or between any person licensed pursuant to article 245 of title 12 [which includes Licensed Professional Counselors], or certified or licensed school psychologist and client, which is the basis for a report pursuant to section 19-3-304, shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this part 3 (C.R.S., 2024, §19-3-311(1)).

This statute means that in any judicial proceeding resulting from a child abuse report, the counselor cannot assert privilege to prevent the disclosure of the initial communication that led to the report. In short, a counselor must share the conversation that made the counselor file the report. The law further clarifies that privilege shall not apply to any discussion of any *future* misconduct or of any other *past* misconduct that could be the basis for another mandated report (C.R.S., 2024, §19-3-311(1); C.R.S., 2024, §19-2.5-1109(2)).

Usually, when a counselor asks a court to commit someone to a hospital involuntarily, the client's right to confidentiality is waived. However, this isn't always the case. For example, in a Colorado ruling (*People v. Taylor*, 1980), a judge protected a client's privacy. A therapist wanted to commit a client who had started treatment voluntarily, but the court refused to allow the therapist to break confidentiality. This case reminds us that the law is not automatic. Even when a situation seems to allow for breaking confidentiality, a judge can choose to protect it, especially when the client sought help voluntarily.

Mandatory Reporting: Suspected Abuse or Neglect

The duty to report suspected abuse or neglect is one of the most critical legal exceptions to confidentiality, rooted in the ethical duty to protect vulnerable persons from harm (ACA, 2014, §B.2.a.; Remley & Herlihy, 2025). Colorado law is explicit regarding who must report and how quickly they must act:

- **Mandated Reporters:** Persons explicitly required to report suspected child abuse or neglect include licensed professional counselors, licensed marriage and family therapists, and unlicensed psychotherapists (C.R.S., 2024, §19-3-304(2)).
- **Standard of Suspicion:** The reporter must act when they have “reasonable cause to know or suspect” that a child has been subjected to abuse or neglect (C.R.S., 2024, §19-3-304(1)(a)). Evidence is NOT required; suspicion alone triggers the mandate (Remley & Herlihy, 2025).
- **Immediate Action:** The report must be made “immediately upon receiving such information” to the county department, local law enforcement, or the child abuse

reporting hotline system (C.R.S., 2024, §19-3-304(1)(a); MHP, 2023, §3.2.2). Failure to willfully comply with this reporting requirement constitutes a class 2 misdemeanor.

- Protection for Reporters: Counselors who make a report in good faith are protected by law from civil or criminal liability (Remley & Herlihy, 2025).

Vulnerable Adults and Elder Abuse

The ethical duty to protect extends to vulnerable adults who may lack the capacity to care for themselves (Remley & Herlihy, 2025, §B.5.a.). While many states have laws aimed at reducing elder maltreatment, these statutes vary significantly and often differ from child abuse laws in two critical ways: first, not all states mandate that professionals report suspected abuse, and second, these statutes usually allow older adults to refuse protective services (Geiderman et al., 2020; Remley & Herlihy, 2025, p. 306). In Colorado, protective service agencies for at-risk adults may access confidential child abuse records when necessary to assess safety and risk for the adult (C.R.S., 2024, §19-1-307(2)(x)).

Duty to Warn and Protect

The duty to warn and protect is a standard that requires counselors to breach confidentiality to prevent violence or self-harm when a client poses a danger (ACA, 2014, §B.2.a.; Remley & Herlihy, 2025). The ethical standard mandates disclosure when necessary to protect others from serious and foreseeable harm (ACA, 2014, §B.2.a.). This duty, often associated with the *Tarasoff* case (Remley & Herlihy, 2025), requires the counselor to take steps to prevent harm to an identifiable person (Remley & Herlihy, 2025).

Colorado law explicitly recognizes this duty, ensuring that confidentiality protections (such as those in restorative justice) do not preclude a mental health provider from complying with a duty to warn (C.R.S. § 13-21-117(2)) (C.R.S., 2024, §19-2.5-905(3)).

The duty to protect extends to health risks. Counselors may be justified in disclosing information if a client has a disease known to be both communicable and life-threatening and their behavior puts others at serious risk, provided the counselor adheres to relevant state laws concerning disclosure (ACA, 2014, §B.2.c.). HIV/AIDS, if well-managed and without lethal viral load, likely fails the “life-threatening” test unless the counselor has specific knowledge that a third party would be placed at serious risk (e.g., compromised immunity or chronic health conditions where HIV would likely pose a threat to the individual’s health or safety).

If counselors determine that clients may be suicidal, they must take action to prevent the clients from harming themselves (ACA, 2014, §B.2.a.; Remley & Herlihy, 2025). This is viewed as a duty to protect the client and is a leading cause of malpractice lawsuits if not handled correctly (Remley & Herlihy, 2025). The legal standard requires counselors to make risk assessments from an informed position and to act comparably to other reasonable professionals (Remley & Herlihy, 2025). Clinica Family Health & Wellness (CFHW) requires 16 hours of mandated training related to suicide assessment in the first year of employment (CFHW, 2025, Training Guidelines).

Analysis and Reflection on Ethical-Legal Conflicts

Professional counselors are expected to uphold the ACA Code of Ethics (2014) and adhere to applicable laws and regulations (ACA, 2014, §C.1.; ACA, 2014, §I.1.a.; ACA, 2014, §I.1.c.). The law establishes minimum standards, while ethical codes encourage aspirational

practice (Remley & Herlihy, 2025). When ethical duties conflict with the law, counselors must first make known their commitment to the ACA Code of Ethics and try to resolve the conflict (ACA, 2014, §I.1.c.). However, if resolution is impossible, counselors, “acting in the best interest of the client, may adhere to the requirements of the law, regulations, and/or other governing legal authority” (ACA, 2014, §I.1.c.). Because the duty to report abuse is mandated by Colorado law (C.R.S., 2024, §19-3-304), the legal requirement generally dictates the course of action.

A common professional pitfall arises when institutional policies create procedural hurdles that conflict directly with the law’s requirements for immediate action. For instance, an agency policy requiring unlicensed staff (who are mandated reporters in CO) to “seek consultation and review with a licensed workforce member before making a report” (MHP, 2023, §3.2) creates a potential legal risk. Colorado law demands reporting “immediately” (C.R.S., 2024, §19-3-304(1)(a); MHP, 2023, §3.2.2). Therefore, the consultation policy, while intended to ensure quality control, could result in a delay that violates the strict timing mandate, potentially exposing the counselor to liability for a misdemeanor. A new counselor must understand that internal policy cannot supersede State law, and compliance with the State statute is necessary to secure good faith immunity and fulfill the ethical duty of nonmaleficence (avoiding harm) (ACA, 2014, §B.2.a.; Remley & Herlihy, 2025). The ethical mandate to protect vulnerable individuals from serious and foreseeable harm compels immediate action, irrespective of internal organizational review processes. In short, it would be wise for a counselor to discuss myriad “what if” scenarios, e.g., if a supervisor(s) is unavailable, what kinds of threats constitute immediate action, etc.

Importance of Consultation

Given the severe consequences of misinterpreting mandatory duties, counselors are ethically obligated to seek consultation when in doubt regarding exceptions to confidentiality or the validity of a required action (ACA, 2014, §B.2.a.; Remley & Herlihy, 2025). This principle extends to legal and ethical decision-making (ACA, 2014, §I.1.b.). To minimize risks, counselors should consult with fellow mental health professionals for ethical dilemmas and clinical questions, and consult an **attorney** for legal questions, such as how to respond to a subpoena or whether a specific law applies to their case (Remley & Herlihy, 2025). Thorough and meticulous documentation of the consultation process and the rationale for the final decision is essential for self-protection against potential future claims (Remley & Herlihy, 2025).

Conclusion

Colorado counselors operate within a stringent framework that defines privacy as a right, but public safety as a higher obligation. This inherently causes ambivalence. Compliance requires not just a generalized commitment to ethics but specific knowledge of Colorado's statutes, particularly those overriding privilege and demanding the immediate reporting of child abuse and the duty to warn. The core challenge lies in the tension between the ethical protection of trust and the legal necessity of disclosure. By prioritizing the mandatory requirements of Colorado law (reporting suspected abuse immediately, asserting the duty to warn, and maintaining vigilance regarding the strict exceptions to confidentiality) counselors can meet both their ethical aspirations and their legal responsibilities to ensure client welfare.

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