



The National PREA Standards: Confidentiality, Ethics and the Law

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Presented by:
The Project on Addressing Prison Rape

PRESENTERS:

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AGENDA:

- 2:00 p.m. – 2:15 p.m. Welcome and Conventions
- 2:15 p.m. – 3:15 p.m. PowerPoint and Discussion
- 3:15 p.m. – 3:30 p.m. Questions

PRC was established through a cooperative agreement between the Bureau of Justice Assistance and the National Council on Crime and Delinquency. The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community corrections, and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents, and services to victims and their families.

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The conventions for this webinar are:

- Your microphone should be on mute.
- If you are joining us by phone and Internet please be sure the telephone button is checked under the audio section of the webinar tool box.
- If you are joining only by phone you are on mute—you will not be able to ask questions, but if you email your question to jyarussi@wcl.american.edu we can address it.
- If you have a question during the webinar, use the chat box feature to send your question to Jaime Yarussi (listed as WCL Organizer).
- If you have technology issues, send an email message to Caleb Bess (cbess@wcl.american.edu) or call at 202-274-4403.

If your question is not answered during the webinar, we will respond after the session.

We will prioritize pre-submitted questions during the webinar and post them along with the webinar archive.



Why are Confidentiality and Ethical Standards Important in the PREA Context?

- Information about sexual abuse is often sensitive
- Inmates and residents can be reluctant to report
- Many professions involved, including Medical, SANE, Rape Crisis, Mental Health, Clergy
- Confidentiality shapes MOUs with rape crisis centers
- Must address confidentiality pursuant to standards

Why are Confidentiality and Ethical Standards Important in the PREA Context Continued?

- Understanding of different culture and obligations of other professionals
- Must counsel residents and inmates about professionals' obligations to report



Professionals in Correctional Facilities Bound by Ethical Duties

- Medical Professionals
 - Physicians
 - Nurses
 - Psychiatrists
- Mental Health Professionals
 - Psychologists
 - Counselors/Therapists
 - Social workers
- Rape Crisis Counselors
- Lawyers
- Religious Professionals

Sources of Ethical & Confidentiality Duties

- State Laws
- Professional Codes of Ethics
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Correctional Institution Policies and Procedure
- Case Law
- PREA Standards

Confidentiality and Privilege

Confidential communication: A statement that is not intended to be disclosed to a third party

Privileged communication: A statement that does not have to be disclosed, even in a court of law

State statutes define what types of communications are considered confidential and/or privileged, as well as provide exceptions to confidentiality and privilege

Confidentiality and Privilege

There are three kinds of privilege

Absolute: Complete protection against disclosure

Semi-Absolute: Confidentiality is guaranteed except in specific circumstances- harm to self or others, criminal acts committed against a minor, and/or if there is a qualified privilege provision in the confidentiality statute

Qualified: Privilege can be breached by court order when a judge finds there are countervailing interests

- Evidence protocol and forensic medical examinations
 - 115.21, 115.221, 115.321
- Inmate/ Detainee/ Resident reporting
 - 115.51, 115.151, 115.251, 115.351
- Inmate/ Resident access to outside confidential support services
 - 115.53, 115.253, 115.353
- Staff and agency reporting duties
 - 115.61, 115.161, 115.261, 115.361
- Medical and mental health screenings; history of sexual abuse
 - 115.81, 115.381

- Evidence protocol and forensic medical examinations
 - 115.21, 115.221, 115.321

(d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and **offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.**

- Inmate/ Detainee/ Resident reporting
 - 115.51, 115.151, 115.251, 115.351

(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, **allowing the inmate to remain anonymous** upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

- Inmate/ Resident access to outside confidential support services
 - 115.53, 115.253, 115.353

(a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. **The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.**

(b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

- Inmate/ Resident access to outside confidential support services continued
 - 115.53, 115.253, 115.353

(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with **community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse**. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

- Staff and agency reporting duties
 - 115.61, 115.161, 115.261, 115.361

(a) The agency shall **require all staff to report immediately** and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

- Staff and agency reporting duties
 - 115.61, 115.161, 115.261, 115.361

(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the **limitations of confidentiality**, at the initiation of services.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under **applicable mandatory reporting laws**.

- Medical and mental health screenings; history of sexual abuse
 - 115.81, 115.381

(d) Any **information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners** and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.

(e) Medical and mental health practitioners **shall obtain informed consent from inmates before reporting information** about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

Medical Professionals

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Do Inmates Have a Right to Privacy in their Medical Information?

The Supreme Court has indicated individuals may have a constitutional right to privacy in medical information.

Whalen v. Roe, 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977) (finding that a New York statute that required the state to maintain records for individuals for whom physicians prescribed dangerous drugs did not violate those individuals' constitutional privacy right).

Lower courts have built upon this precedent to recognize a constitutional right to privacy to medical information, although not all courts are in agreement.

Do Inmates Have a Right to Privacy in their Medical Information?

The right to confidentiality of medical information in custodial settings is more limited.

Facilities must maintain confidential treatment records.

Powell v. Schriver, 1999 WL 223434 (2d Cir. 1999) (“The gratuitous disclosure of an inmate’s confidential medical information as humor or gossip . . . is not reasonably related to a legitimate penological interest.”);

Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980) (holding that correctional facilities must maintain confidential treatment records, pursuant to the “six minimum criteria for adequate prison mental health services”)

Do Inmates Have a Right to Privacy in their Medical Information?

There is no general right to privacy; right to privacy in medical information will be balanced against institutional needs.

Seaton v. Mayberg, 610 F.3d 530 (9th Cir. 2010)
("Prisoners do not have a constitutionally protected expectation of privacy in prison treatment records when the state has a legitimate penological interest in access to the records.").

Do Inmates Have a Right to Privacy in their Medical Information?

Typically no privacy in HIV status disclosure made for a legitimate purpose.

Anderson v. Romero, 72 F.3d 518 (7th Cir. 1995)
(holding that disclosure of inmates' HIV-positive condition to officers, inmates, and prison barber did not violate that inmate's constitutional right to privacy)

Medical Codes of Ethics

Generally, confidentiality in medical information is protected and medical personnel in non-correctional settings are not required to report the sexual abuse of non-vulnerable adults.

Generally, medical personnel are mandatory reporters for sexual abuse of children and vulnerable adults.



Medical Codes of Ethics

American Medical Association

The **information disclosed** to a physician during the course of the relationship between physician and patient **is confidential to the greatest possible degree**. The physician **should not reveal confidential communications** or information without the express consent of the patient, **unless required to do so by law**. E 5.505 Confidentiality

Medical Codes of Ethics

National Commission on Correctional Health Care

“The confidentiality of a patient’s written or electronic health record, as well as verbally conveyed health information, is maintained.”

“Health care encounters are private, with a chaperon present when indicated, and are carried out in a manner designed to encourage the patients’ subsequent use of health services. Clinical encounters should be conducted in private and not observed by security personnel unless the inmate poses a probable risk to the safety of the health care provider.”

NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE,
STANDARDS FOR HEALTH SERVICES IN PRISONS (2003).

Medical Codes of Ethics

National Commission on Correctional Health Care Standards

A-09: Privacy of Care

Requires that discussion of patient information and clinical encounters is conducted in private and carried out in a manner designed to encourage the patient's subsequent use of health services.

H-02: Confidentiality of Health Records

Requires that the confidentiality of a patient's written or electronic health record, as well as orally conveyed health information, is maintained.

NCCHC Standards are available for purchase at:

<http://www.ncchc.org/publications>

Tort Liability for Breach of Confidentiality

Medical professionals **can** be liable for a breach in confidentiality

- *MacDonald v Clinger*, 84 App Div 2d 482, 446 NYS2d 801 (N.Y. App. Div. 4th Dept. 1992) (holding that a physician's disclosure of confidential information to the patient's wife was a breach of the fiduciary duty of confidentiality)
- *Humphers v First Interstate Bank*, 696 P2d 527 (Or. 1985) (finding a physician who revealed the identity of a former patient to her biological daughter who had been given for adoption breached the physician's professional duty to keep patient's information secret)

HIPPA

An "authorization" is typically required for disclosing "protected health information" however, HIPPA provides for an exception in correctional settings

- HIPAA **does not** prevent a medical or mental health provider from reporting sexual abuse to correctional authorities for investigation/prosecution
- HIPAA **does not** prevent disclosure of information for data collection as required under PREA

HIPAA does not provide individuals with a private right of action

HIPPA – Correctional Institution Exception

(5) Correctional institutions and other law enforcement custodial situations.

(i) Permitted disclosures. A covered entity **may disclose to a correctional institution or a law enforcement official** having lawful custody of an inmate or other individual **protected health information** about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is **necessary for**:

HIPPA – Correctional Institution Exception

- (A) The **provision of health care** to such individuals;
- (B) The **health and safety of such individual or other inmates**;
- (C) The **health and safety of the officers or employees** of or others at the correctional institution;



HIPPA – Correctional Institution Exception

(D) The **health and safety of** such individuals and officers or other **persons responsible for the transporting of inmates** or their transfer from one institution, facility, or setting to another;

(E) **Law enforcement on the premises of the correctional institution;** and

(F) **The administration and maintenance of the safety, security, and good order of the correctional institution.**

HIPPA – Correctional Institution Exception

(ii) Permitted uses. A covered entity that is a correctional institution **may use protected health information of individuals** who are inmates **for any purpose** for which such protected health information may be disclosed.

(iii) No application after release. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

Interaction with State Law

HIPAA's "privacy rule" generally pre-empts state law when state law is not more stringent in the protection of health information



State Medical Health Statutes

CONN. GEN. STAT. § 52-146o (2012): Disclosure of patient communication or information by physician, surgeon or health care provider prohibited

(a). . . in any civil action or any proceeding preliminary thereto or in any probate, legislative or administrative proceeding, a physician or surgeon . . . shall not disclose

(1) any communication made to him by, or any information obtained by him from, a patient or the conservator or guardian of a patient with respect to any actual or supposed physical or mental disease or disorder, or

(2) any information obtained by personal examination of a patient, unless the patient or his authorized representative explicitly consents to such disclosure.

State Medical Health Statutes - Common Exceptions

- Communicable diseases
- Public health reasons
- Mandatory Reporting Obligations (Child or Vulnerable Adult Abuse)
- When medical condition is “at issue” in litigation
- When patient brings lawsuit against the medical professional providing services
- “Catch-all” provisions that require disclosure pursuant to state law, regulation, or court order

State Medical Health Statutes - Exceptions

CONN. GEN. STAT. § 52-146o (2012): Disclosure of patient communication or information by physician, surgeon or health care provider prohibited

(b) **Consent** of the patient or his authorized representative **shall not be required:**

(1) **pursuant to any statute or regulation of any state agency or the rules of court,**

(2) **by a physician, surgeon or other licensed health care provider against whom a claim has been made, or there is a reasonable belief will be made, in such action or proceeding, to his attorney or professional liability insurer or such insurer's agent for use in the defense of such action or proceeding,**

State Medical Health Statutes - Exceptions

CONN. GEN. STAT. § 52-146o (2012): Disclosure of patient communication or information by physician, surgeon or health care provider prohibited

(3) to the Commissioner of Public Health for records of a patient of a physician, surgeon or health care provider in connection with an investigation of a complaint, if such records are related to the complaint, or

(4) if **child abuse, abuse of an elderly individual, abuse of an individual who is physically disabled or incompetent or abuse of an individual with intellectual disability** is known or in good faith suspected.

State Medical Health Statutes - Exceptions Specific to Corrections

Tex. Rev. Civ. Stat. art. 4495b, § 5.08(h)(9) (1999): Physicians may without obtaining their patients' consent, disclose confidential information if their patient **is detained in a "penal or other custodial institution"**

Cal. Penal Code § 7501(c) (1995): **Correctional health professionals may disclose** a prisoner's HIV status to **parole or probation officers** when an HIV-infected inmate is released from prison.

Considerations for Medical Professionals

- Confidentiality is part of providing adequate medical treatment.
- Inmates' right to privacy are balanced against facilities' need to maintain safety and security
- Legal and ethical duties of confidentiality may compete with PREA standards and state law
- PREA's reporting requirements are consistent with HIPPA's prohibition on disclosure of confidential information, however they may conflict with state duties of confidentiality
- State and federal law provide for many exceptions to confidentiality

Mental Health Professionals



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Mental Health Codes of Ethics

Generally, mental health providers in non-correctional settings are not required to report the sexual abuse of non-vulnerable adults.

Generally, mental health providers in non-correctional settings are protected under confidentiality and privacy laws in sexual abuse situations

Mental Health Codes of Ethics

American Mental Health Counselors Association

Principle 3- Confidentiality

Mental health counselors have a primary obligation to safeguard information about individuals obtained in the course of practice, teaching, or research.

Personal information is communicated to others only with the person's written consent or in those circumstances where there is clear and imminent danger to the client, to others or to society

Mental Health Codes of Ethics

American Counseling Association

B.1.c. Respect for Confidentiality:

Counselors do not share confidential information without client consent or without sound legal or ethical justification.

B.2.a. Danger and Legal Requirements:

Confidentiality does not apply when disclosure is required to protect clients or identified others from serious and foreseeable harm or when legal requirements demand that confidential information must be revealed.

Tarasoff Duty

"Once a therapist does in fact determine, or under applicable professional standards reasonably should have determined, that a patient poses a serious danger of violence to others, [the therapist] bears a duty to exercise reasonable care to protect the foreseeable victim of that danger."

Tarasoff v. Regents of the University of California,
17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14
(Cal. 1976)

State Mental Health Statutes

VA. CODE ANN. § 8.01-400.2 (West 2006): Communications between certain mental health professionals and clients.

Except at the request of or with the consent of the client, no licensed professional counselor . . . licensed clinical social worker . . . licensed psychologist . . . or licensed marriage and family therapist . . . shall be required in giving testimony as a witness in any civil action to **disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional capacity** and necessary to enable him to discharge his professional or occupational services according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking professional counseling or treatment and advice relative to and growing out of the information so imparted;

State Mental Health Statutes - Common Exceptions

- Mandatory Reporting Obligation (Child or Vulnerable Adult Abuse)
- When mental status is “at issue” in litigation
- When patient brings lawsuit against the mental health professional providing services
- “Catch-all” provisions

State Mental Health Statutes - Exception

VA. CODE ANN. § 8.01-400.2 (West 2006): Communications between certain mental health professionals and clients.

“provided, however, that **when the physical or mental condition of the client is at issue** in such action, or when a court, in the exercise of sound discretion, deems such disclosure necessary to the proper administration of justice, no fact communicated to, or otherwise learned by, such practitioner in connection with such counseling, treatment or advice shall be privileged, and **disclosure may be required**. The **privileges conferred by this section shall not extend to testimony in matters relating to child abuse and neglect nor serve to relieve any person from the reporting** requirements set forth in § 63.2-1509.”

Considerations for Mental Health Professionals

- Confidentiality is part of providing adequate mental health treatment.
- Duties of confidentiality for mental health professionals often include exceptions for danger to a third party
- Duties of confidentiality may compete with PREA standards
- State and federal law provide for many exceptions to confidentiality

Rape Crisis Counselors

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Nearly every state has a law that specifically provides for confidential communications between rape crisis providers and survivors of sexual abuse

Each statute outlines:

- Type of privilege that applies between a victim and a rape crisis counselor
- Which employees are covered
- Who may assert the privilege
- When that privilege has been waived
- Any exceptions to confidentiality



Degree of Confidentiality

CAL. EVID. CODE § 1035.4 (West 2013): **Confidential communication between the sexual assault counselor and the victim**

The court **may compel** disclosure of information received by the sexual assault counselor which constitutes relevant evidence of the facts and circumstances involving an alleged sexual assault about which the victim is complaining and which is the subject of a criminal proceeding if the court determines that the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled.

Degree of Confidentiality

HAW. REV. STAT. § 626-1, Rule 505.5(b) (2010): **Victim-counselor privilege**

A victim has a **privilege to refuse to disclose and to prevent any other person from disclosing confidential communications** made to a victim counselor for the purpose of counseling or treatment of the victim for the emotional or psychological effects of sexual assault, domestic violence, or child abuse or neglect, and to refuse to provide evidence that would identify the name, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim.

Which employees are covered?

MINN. STAT. ANN. § 595.02 (2013): **Testimony of Witnesses**

“Sexual assault counselor” for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault

Which employees are covered?

MO. ST. § 455.003 (2013): **Rape crisis centers-- employees or volunteers required to maintain confidentiality--incompetent to testify**

1. A rape crisis center shall:

(1) Require **persons employed by or volunteering services to the rape crisis center** to maintain confidentiality of any information that would identify individuals served by the center and any information or records that are directly related to the advocacy services provided to such individuals; and

Who can claim the privilege?

FLA. STAT. ANN. § 90.5035 (2006): **Sexual assault counselor-victim privilege**

(3) The privilege may be claimed by:

(a) The victim or the victim's attorney on his or her behalf.

(b) A guardian or conservator of the victim.

(c) The personal representative of a deceased victim.

(d) The sexual assault counselor or trained volunteer, but only on behalf of the victim. The authority of a sexual assault counselor or trained volunteer to claim the privilege is presumed in the absence of evidence to the contrary

Waivers

IOWA CODE § 915.20A (West 2008): **Victim Counselor Privilege**

2. A victim counselor shall not be examined or required to give evidence in any civil or criminal proceeding as to any confidential communication made by a victim to the counselor, nor shall a clerk, secretary, stenographer, or any other employee who types or otherwise prepares or manages the confidential reports or working papers of a victim counselor be required to produce evidence of any such confidential communication, unless the victim waives this privilege in writing or disclosure of the information is compelled by a court pursuant to subsection

Exceptions to Confidentiality

Common Exceptions

- Victim is planning to commit a crime
- Self harm
- Serious risk of immediate harm exists
- Child Abuse/Vulnerable Adult Abuse
- Death of the victim

Exceptions to Confidentiality

WASH. REV. CODE § 5.60.060(7)(b) “[A rape crisis is permitted to disclose confidential communication without the victim’s consent] if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person.”

WIS. STAT. § 905.045 (2013) “[Sexual Assault Advocate-Victim Privilege] does not apply to any report concerning child abuse that an advocate is required to make under s. 48.981].”

Considerations for Agencies Entering into MOUs

- What degree of confidentiality your facility will provide to inmates
- If a facility does not provide complete confidentiality, how will the facility monitor communications, and which staff will be responsible
- What kind of information you expect the rape crisis center to share, remembering that the center may not be legally able to give you that information

Other Professionals

Ethical Duty of Confidentiality

ABA Rule 1.6 Confidentiality Of Information

Comment [2]: “A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. ... This contributes to the trust that is the hallmark of the client-lawyer relationship.”

Privileged Communications

ABA Rule 1.6 Confidentiality Of Information

Comment [3] “The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client.”



Ethical Duty of Confidentiality – Exceptions

ABA Rule 1.6 Confidentiality Of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Ethical Duty of Confidentiality – Exceptions

(b) A lawyer **may** reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

Ethical Duty of Confidentiality – Exceptions

(4) to **secure legal advice** about the lawyer's compliance with these Rules;

(5) to **establish a claim or defense** on behalf of the lawyer in a controversy between the lawyer and the client, **to establish a defense** to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to **respond to allegations** in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to **detect and resolve conflicts of interest** arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

Ga. Code Ann. § 24-9-22 (West 2006): Communications to clergyman privileged

Every communication made by any person professing religious faith, seeking spiritual comfort, or seeking counseling to any Protestant minister of the Gospel, any priest of the Roman Catholic faith, any priest of the Greek Orthodox Catholic faith, any Jewish rabbi, or to any Christian or Jewish minister, by whatever name called, shall be deemed privileged.

No such minister, priest, or rabbi shall disclose any communications made to him by any such person professing religious faith, seeking spiritual guidance, or seeking counseling, nor shall such minister, priest, or rabbi be competent or compellable to testify with reference to any such communication in any court

Fact Pattern



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17 year old youthful inmate comes in for medical care. He asks to be tested for HIV and other STDs. He has been in the facility for 1 year. Records at initial intake did not indicate any of those conditions. The youthful inmate also asks for medical treatment regarding abrasions and bruising.

In the examination, he admits that he has been sexually assaulted but asks that you provide treatment but not report the abuse because he doesn't want other people to know and doesn't want to go for protective custody because he will be in isolation.

You provide the medical care. Asks if he want outside support pursuant to PREA standard 115.53. He receives outside support from the local rape crisis center.

What are the obligations of the medical person to report?

What are the obligations of the rape crisis counselor?

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- Medical and mental health staff should consult federal and state laws regarding their responsibilities for reporting sexual abuse and maintaining the confidentiality of patient information.
- Professional codes of ethics provide good guidance for reporting and confidentiality of sexual abuse but they are neither absolute nor controlling.
- Facilities entering into MOU's with Rape Crisis Centers must be mindful of state laws concerning confidentiality and privilege for sexual assault counselors and victims
- Other professionals working in correctional facilities, (i.e., attorneys or religious personnel), may be bound by duties of confidentiality

- Legal Responses to Sexual Violence in Custody: Using Existing State Mandatory Reporting Statutes to Improve Disclosure of Sexual Violence in Correctional Settings, Brenda V. Smith, Loren Ponds, and Melissa Loomis (2013)
<http://www.wcl.american.edu/endsilence/publications.cfm>
- Fifty State Survey of Mandatory Reporting Laws, The Project on Addressing Prison Rape (2012) <http://www.wcl.american.edu/endsilence/statesurveys.cfm>
- Fifty State Survey of Abuse of Vulnerable Persons Statutes, The Project on Addressing Prison Rape (2012) <http://www.wcl.american.edu/endsilence/statesurveys.cfm>
- Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors, The Project on Addressing Prison Rape (2011)
<http://www.wcl.american.edu/endsilence/statesurveys.cfm>



We would like your feedback!

- An evaluation survey is posted at:
<http://www.surveygizmo.com/s3/1363968/The-National-PREA-Standards-Confidentiality-Ethics-and-the-Law-September-17-2013>
- Surveys should be completed by
Tuesday, October 1, 2013 at 5:00 p.m. EDT.

A follow-up email will be sent immediately following this webinar. That email will include the link for the evaluation survey as well as a link to the recording and PowerPoint for this session.

If you watched this webinar in a group, please forward the link for evaluation to the whole group.

For more information about the **National PREA Resource Center**:
www.prearesourcecenter.org; or ask questions at info@prearesourcecenter.org

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