

Hannon Ethics Article

This brief article, the first in a series of three, offers an updated review of the various limits on privacy in conducting psychotherapy. Using a metaphor of a locked consulting room, the various ways to gain entry to that locked room will be explored. This first article focuses upon how psychologists must or may open their locked door. The next two ones will describe the various ways that the patient, and governmental or institutional entities, can respectively gain entry. In offering these updates, this series will specifically delineate the impact of the new ethics code, formally known as the Ethical Principles of Psychologists and Code of Conduct (published in December 2002), and the new HIPAA regulations, on privacy and confidentiality. Hopefully, while reading this, you will also develop a hunger to learn much more at the Ethics Committee's presentation on the new Ethics Code to the SGVPA on May 1, 2004.

To extend the analogy, imagine that your psychotherapy practice occurs inside a hermetically sealed consulting room. Your patients' private communications, and your maintenance of such confidential material, including your billing information and your notes, take place within this private, locked space. Indeed, the intimate nature of what occurs within the confines of this room defines much of the psychological treatment. The privacy of this room remains crucial regardless of the type of treatment provided, whether psychoanalytic or cognitive behavioral or some other approach. (Different rules apply for provision of forensic psychological evaluations, or of industrial-organizational psychological services, but due to space limitations the focus will be specifically on provision of psychotherapy by psychologists).

The various ways that such a nicely locked door can be violated are not infinite. As was just noted, they are limited to ones initiated by you, by the patient, or by higher authorities like the ethics code or the legal system. Here are the primary ways that psychologists themselves crack open their locked consulting room doors.

Most psychologists forget that, by simply agreeing to accept insurance by their patients, they have already unlocked their consulting room door. The insurance companies have a right to exercise some control over to whom they will be paying their money. All patients with insurance, even indemnity coverage, have signed a contract allowing their insurance companies various degrees of access to that room.

Other psychologist-related intrusions occur whenever information is sought from another provider, or efforts are made to contact another person involved in the patients' life, i.e. a family member. Although mandated by law, psychologists also open their locked rooms whenever making a child or elder abuse report, exercising their duty to warn under the Tarasoff precedent, or *choose*, as is ethically and legally allowable, to warn in cases of potential suicide or property damage. These legal mandates and allowances will be reviewed in detail in the third article in this series. Suffice to say that they originate from a governmental desire to violate privacy when the good of society is at risk. Most psychologists adhere to these requirements for the most ethical of reasons, and for the ultimate benefit of the treatment, but they are still the ones taking such action. Failure to do so may lead to criminal or civil prosecution, so you have to be ready to pay the consequences.

But before you pack your lunch for the Big House, remember that the new Ethics Code, like the old one, allows you to speak up in any legal proceeding and indicate that

the Ethics code conflicts with the law. You should speak up loudly, where indicated, but always know how you can lose and what the costs will be.

For the most part, your efforts to keep your doors tightly locked are protected by the new Ethics Code. These safeguards are primarily described in Section 4 of the new Code, which concerns *Privacy and Confidentiality*. For example, psychologists continue to have a “primary obligation” to maintain confidential information, to discuss the limits of confidentiality with patients, to minimize any intrusions on privacy, and to be especially careful when contacting other parties regarding treatment, obtaining consultations, or using confidential information for didactic purposes. They are now required to obtain specific permission to audio or video record a session.

Please join us on May 1st for more ideas about bolting and opening doors.
Meanwhile, guard your entrances carefully!