

Duty to Warn:

The general rule for mental health professionals is that counselor-client communications are confidential and should be protected. However there are important exceptions to this rule. Both Louisiana law and the ACA Code of Ethics address this issue.

The current ACA Code of Ethics addresses this issue in B.2 Exceptions: *The general requirement that counselors keep information confidential 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.*

The Louisiana Statute [R.S. 9:2800.2](#) states:

§2800.2. Psychologist, psychiatrist, marriage and family therapist, licensed professional counselor, and social worker; limitation of liability

A. When a patient has communicated a threat of physical violence, which is deemed to be significant in the clinical judgment of the treating psychologist or psychiatrist, or marriage and family therapist, or licensed professional counselor, or social worker, against a clearly identified victim or victims, coupled with the apparent intent and ability to carry out such threat, the psychologist, licensed under R.S. 37:2351 through 2369, the medical psychologist, licensed under R.S. 37:1360.51 through 1360.72, the psychiatrist, licensed under R.S. 37:1261 through 1291, or the social worker, credentialed under R.S. 37:2701 through 2723, treating such patient and exercising reasonable professional judgment, shall not be liable for a breach of confidentiality for warning of such threat or taking precautions to provide protection from the patient's violent behavior.

B. A psychologist's, psychiatrist's, or marriage and family therapist, or licensed professional counselor, or social worker's duty to warn or to take reasonable precautions to provide protection from violent behavior arises only under the circumstance specified in Subsection A of this Section. This duty shall be discharged by the psychologist, psychiatrist, or marriage and family therapist, or licensed professional counselor, or social worker if the treating professional makes a reasonable effort to communicate the threat to the potential victim or victims and to notify law enforcement authorities in the vicinity of the patient's or potential victim's residence.

C. No liability or cause of action shall arise against any psychologist, psychiatrist, or marriage and family therapist, or licensed professional counselor, or social worker based on an invasion of privacy or breach of confidentiality for any confidence disclosed to a third party in an effort to discharge the duty arising under Subsection A of this Section.

Acts 1986, No. 697, §1, eff. July 8, 1986; Acts 1987, No. 397, §1; Acts 1993, No. 764, §1, eff. June 22, 1993; Acts 2003, No. 870, §1; Acts 2009, No. 251, §2, eff. Jan. 1, 2010.

NOTE: SEE ACTS 1986, NO. 697, §2, REGARDING APPLICABILITY TO CAUSES OF ACTION ARISING AFTER JULY 8, 1986.

Essential elements:

- At times counselors must breach confidentiality for the purpose of protecting clients or other people from harm.

- Some of the most limits to confidentiality bearing on this issue off danger or risk of harm include (a) when a client is suicidal and poses a danger to himself-or herself; (b) when a client threatens harm to an identifiable individual or group. Or (c) when a counselor suspects abuse or neglect of a child or other dependent person.
- It is important that counselors elicit informed consent from clients at the outset of the counseling relationship so that the client understand these limitations to confidentiality up front
- Counselors must be familiar with state and federal laws regarding the duty to warn, to protect and to report abuse of children and other vulnerable persons.

Positive Practices

- Accept the obligation to intervene when a client poses a real threat to self or others.
- Protecting the client may involve providing more intense treatment but at other times, it may necessitate a breach of confidentiality and contact with authorities.
- Know your jurisdictions' legal requirements when it comes to your duty to warn and protect. (Remember that the child abuse regulations are under a different statute)
- Clearly inform clients of the limits of confidentiality.
- Routinely seek consultation with peers if you question your decision to violate confidentiality.

Ethics Desk Reference for Counselors by Jeffrey E. Barnett and W. Brad Johnson)