



STATE OF WISCONSIN

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Positions Statements Related to Psychology Issued by the Psychology Examining Board

CONFIDENTIALITY/LIABILITY

IS WISCONSIN A TARASOFF STATE? WHAT DOES THIS MEAN?

Yes, the state of Wisconsin follows the result in *Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425 (Cal. 1976), a California Supreme Court decision which held that mental health professionals' have a duty to exercise reasonable care in the treatment of their patients by warning others of threats of harm by the patient. See *Schuster v. Altenberg*, 144 Wis. 2d 223 (1988). In *Schuster*, the Wisconsin Supreme Court held that the duty to warn extends to whatever other steps are reasonably necessary under the circumstances, including contacting the police, recommending or requiring hospitalization, or notifying a family member or friend who can help ensure safety. The case law in Wisconsin rejects the idea that the victim must be foreseeable; a psychotherapist has a duty to warn even if the actual victim was not foreseeable. Also, Wisconsin does not create a distinction between a generalized statement of dangerous intent and a particularized statement specifying the patient's intended victims.

The ruling in *Schuster* was supported by later Wisconsin decisions in *Steinberg v. Jensen*, 194 Wis. 2d 439 (1995), and *Wisconsin v. Agacki*, 226 Wis. 2d 349 (1999). These decisions held that there is no privilege between psychotherapists and patients regarding communications relevant to the discovery of the physical, mental or emotional condition of the patient in a proceeding in which that condition is an element of the patient's claim or defense. Thus, the principle that the confidentiality of patient communications gives way in certain instances is embodied even in the rules of evidence in court proceedings.

DOES THE WISCONSIN PSYCHOLOGY BOARD'S RULES OF PROFESSIONAL CONDUCT INCLUDE A TARASOFF EXCEPTION?

Yes, Wis. Admin. Code, PSY 5.01(12) (c) provides an exception to the prohibition against the breaching patient confidentiality if such disclosure is necessary to prevent injury to the client or other person. Thus, psychologists may disclose confidential information without the consent of the patient in order to warn potential victims and/or to contact the police when a patient presents a serious risk of danger to himself or others. In deciding whether to disclose and to whom to

disclose, a psychologist is required to exercise reasonable care to protect the victim from the danger presented.

DOES THE AMERICAN PSYCHOLOGICAL ASSOCIATION (APA) ALLOW A PSYCHOLOGIST TO DISCLOSE CONFIDENTIAL PATIENT INFORMATION IN CERTAIN SITUATIONS?

Yes, the APA Ethical Principles of Psychologists and Code of Conduct (2002) provides that psychologist may disclose confidential information without the consent of the individual when mandated by law or permitted by law for a valid purpose, such as to protect the client, the patient, a psychotherapist or other third parties from harm.

WHAT SHOULD A PSYCHOLOGIST CONSIDER IN DETERMINING WHETHER TO REPORT CONFIDENTIAL INFORMATION PROVIDED BY A PATIENT THAT INVOLVES THREATS OF HARM?

A psychologist should consider several factors in determining whether confidential patient communications involving threats of harm should be disclosed. These factors include the sincerity, capability, imminence and gravity of the threat. Psychotherapists may want to consider the following questions:

- Does this person have a genuine intent to inflict harm?
- Does the person have the ability and opportunity to carry out the threat?
- Is there some sense of immediacy to the threat?
- Is there a serious risk of harm?

Although it may be difficult to answer these questions definitively, they provide useful guidance to assess the risk presented by the patient. Ultimately, the psychologist should make an informed decision that reflects what a reasonable practitioner would do under similar circumstances.

A CLIENT, IN APRIL, INFORMED A PSYCHOLOGIST THAT THE CLIENT INTENDS TO COMMIT SUICIDE BY CHRISTMAS. THE PSYCHOLOGIST HAS NOT SEEN THE CLIENT SINCE MAY OF THAT SAME YEAR. SHOULD THE PSYCHOLOGIST REPORT THE THREAT?

Under Chapter 51 of the Wisconsin Statutes, an imminent risk of harm is defined to be based upon “recent acts or statements.” If the patient made threats to take harmful action in the distant future, there is no imminent threat, and thus, no duty to warn or protect. However, if a threat by a certain date means that it could happen sooner, the psychologist has a duty to at least determine how soon the patient is considering. The psychologist must also consider whether the individual was still considered a patient at the time of the threat, or whether the patient/therapist relationship has been terminated. A psychologist who is not actively seeing an individual in

therapy has no obligation to report the individual's threat of harm to self or others. It is generally advisable to close a case 90 days after the last face-to-face contact to establish that the patient is no longer considered to be in active treatment and, consequently, the psychologist has no further professional responsibility to that patient unless the patient returns to therapy. During those 90 days, it would be clinically wise and ethically responsible, though, to periodically monitor the patient's status, especially if a suicide threat was made shortly after ending therapy and the patient was unwilling to continue or return to treatment. However, it is important to note that the duty to warn/protect is different from the mandated reporting obligation of reporting suspected abuse or neglect of a child patient.

IN WHAT MANNER, AND TO WHOM, SHOULD A PSYCHOLOGIST REPORT A THREAT OF HARM BY A PATIENT?

The responsibility to report a patient threat of harm to self or others may be fulfilled in whatever manner is most appropriate including contacting the police, recommending or requiring hospitalization, or notifying a family member or friend who can help ensure safety. Depending on the seriousness of the threat and the imminent ability of the threat to be carried out (e.g. the patient has a gun, has threatened to shoot a potential victim, and knows where to find that victim), the psychologist should act in a manner that is consistent with the seriousness of the threat in deciding how, and to whom, to report the threat.

IS A PSYCHOLOGIST MANDATED TO REPORT SUSPECTED CHILD ABUSE OR NEGLECT IF THE INFORMATION IS OBTAINED FROM AN ALLEGED PERPETRATOR OR PERSON OTHER THAN THE ALLEGED CHILD VICTIM?

No. Stats. 48.981 (The Children's Code) mandates specific individuals including mental health professionals to report to the appropriate agency when, in the course of professional duties with the child, there is a reasonable suspicion that the child has been abused or neglected or has been threatened with abuse or neglect.

When the suspicion of child abuse or neglect derives from information provided by an alleged perpetrator or person other than the alleged child victim, a psychologist MAY report this suspicion without liability if the report is made in good faith. In addition, in accordance with two California Supreme Court rulings (1974 & 1976) a psychologist MAY have a duty to warn or protect victim or intended victim(s) or risk a negligence claim. Finally, most psychologists would consider such an action to fall within the APA Ethical Principles of Psychologists and Code of Conduct (2002) if there is reasonable suspicion that a child is currently being harmed or if that child or other children are still at risk of abuse or neglect.

IS SUSPECTED ELDER ABUSE A MANDATED REPORTING REQUIREMENT?

No. Currently, it is discretionary. However, the duty to warn and protect remains relevant.

IS A 14 YEAR OLD'S PERMISSION NEEDED BEFORE RECORDS CAN BE RELEASED, AND CAN A MINOR WHO IS 14 OR OLDER BLOCK RELEASE OF RECORDS?

No to both questions. While a child over 14 may release mental health records, the parents also retain the ability to release and access records, even without the child's permission, unless denied periods of physical placement after divorce as stated in Stats. Ch. 767 (Actions Affecting the Family). Under statutes 51.30(5)(a) and 48.396(1b), either a child over the age of 14 or his/her parents or legal guardian may release records without the signed release of the other. Thus, a child 14 or older cannot deny a parent access to his/her mental health records or prevent release of these records, unless that parent has been denied periods of physical placement. Parents may certainly be asked to respect confidentiality but cannot legally be denied access to records (even if it is not in the child's best interests) without a court order.

Under Stats. 51.47 (2) a health care provider or outpatient facility may only release records regarding outpatient, or detoxification, drug or alcohol services WITH the consent of a minor patient, provided the minor is 12 years of age or older.

THERAPY

WHEN A PRACTITIONER GOES ON VACATION, SHOULD THE CLIENTS PROVIDE A RELEASE OF INFORMATION TO ALLOW A COVERING PSYCHOLOGIST ACCESS TO CLIENT RECORDS?

Informed consent, which allows the client to ask questions and possibly object to the dissemination of any information, is always a good idea, even when it is not legally necessary. It can consist of an actual "release of information" form signed by the client(s), especially if reinforced in a progress note, or as progress note reference to discussion of the issue. Informing the client of vacation and on-call procedures in the initial treatment agreement provides another way to inform the client and elicit any concerns. These procedures are especially important for clinic settings and multi-provider practices have no requirement to obtain releases of information when they have an on-call or coverage system. State law allows, "Within the treatment facility...confidential information may be disclosed to individuals employed...at the facility when and to the extent that performance of their duties requires that they have access to such information." [Stats. 51.30(4)(b)(6)] While written releases are not required, respect and courtesy calls for a discussion of the process with active clients near the start of vacation. We also recommend that clients be advised of their right to refuse to talk with on-call coverage.

SHOULD A PSYCHOLOGIST WHO IS LEAVING EMPLOYMENT CONTACT HIS/HER CLIENTS AND INFORM THEM OF THE CHANGE?

There are a number of issues that must be considered including the APA Ethical Principles and Code of Conduct, statutes that might apply to the particular employment setting (i.e., Wisconsin Certified Outpatient Mental Health Clinic), and any employment agreement that the psychologist might have with the employer. The APA Ethical Principles and Code of Conduct indicate that psychologists make reasonable efforts "...to provide for orderly and appropriate resolution of responsibility for client/patient care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the client/patient." Likewise, Psy 5.01(31) states that psychologists must notify clients when service will be interrupted or terminated. Statutes or rules such as DHS 35 or Stats. 146.819 may define things such as ownership of the patient record. An individual psychologist's contract or employment agreement may also define what actions can be taken upon termination of employment, and may prohibit any attempts "to solicit" former clients/patients. All of the above must be considered, with the welfare of the client/patient being the primary concern.

IS IT PERMISSIBLE TO ACCEPT GIFTS FROM CLIENTS?

The rules of conduct do not explicitly prohibit receipt of gifts. When a proffered gift represents a therapeutic issue or a possible manipulation, psychologists must exercise competent professional judgment. Acceptance of valuable gifts may create the impression of client exploitation.

MAY A PSYCHOLOGIST CONSULT WITH AND MAKE RECOMMENDATIONS TO A PATIENT AND HIS OR HER PRESCRIBING HEALTH CARE PROFESSIONAL REGARDING MEDICATION FOR THE PATIENT?

Yes, the law allows a psychologist to consult with and provide recommendations to a patient or to a patient's prescribing health care professional regarding medication. The limitations that apply to these services apply to all services. A psychologist may only provide services that are consistent with the psychologist's training, education or experience. The psychologist also may not provide the health care prescriber with any patient information without a release from the patient. It is incumbent upon the psychologist to make sure that the patient understands that the psychologist may not prescribe medication and that the patient should rely on information about medication from his or her health care prescriber if the opinions of the psychologist and the health care prescriber differ. Further guidelines can be found in Psy 5.

CAN A PROVIDER SEND A COMMUNICATION TO THE BOARD ASKING ADVICE ON WHETHER OR NOT TO FILE A COMPLAINT?

No, the provider should send the complaint to the Board and allow the Board to investigate the matter. The Board will not advise licensees about whether or not to file a complaint.

ARE TELETHERAPY AND INTERNET THERAPY PERMITTED IN WISCONSIN?

Both methods are considered a part of the “practice of psychology” as defined in Stats. 455.01(5). However, practice protections as noted in Stats 455.02(1m) require a Wisconsin license to practice psychology in the state. Therefore, psychologists that are using teletherapy with Wisconsin residents must have a license from the Wisconsin Psychology Examining Board.

MALPRACTICE/INSURANCE

IS THERE A MINIMUM AMOUNT OF MALPRACTICE (ERRORS & OMISSIONS) INSURANCE THAT A PSYCHOLOGIST IS REQUIRED TO CARRY?

No minimum amount of insurance is set by Wisconsin law.

LICENSURE

IF I FAIL THE EPPP, HOW MANY OPPORTUNITIES WILL I HAVE TO PASS THE EXAMINATION?

If you fail, you can apply for up to three more attempts for examination. If you fail after the fourth attempt, you will be required to petition the board for further opportunities to pass the EPPP.

As per Psy 2.08 Reexamination " An applicant who fails to achieve a passing grade in the examinations require...May apply for reexamination on forms provided by the board and pay the appropriate fee... An applicant who fails to achieve a passing grade may be reexamined 3 times at not less than 3 - month intervals.

If the applicant fails to achieve a passing grade on the third reexamination, the applicant may not be admitted to any further examination until the applicant reapplies to the board for permission to be reexamined and presents evidence satisfactory to the board of further professional training or education as the board may prescribe or approve following its evaluation of the applicant's specific case."

REQUIREMENTS FOR PSYCHOLOGY LICENSING FOR INTERNATIONAL GRADUATES

The State of Wisconsin psychology licensure requirements are outlined in Ch Psy 2 and Stats 455.04, including:

- doctoral degree in psychology;
- 3000 hours (2 years)of supervised practice;
- Passage of the EPPP and state jurisprudence exam, and;
- Oral interview by the board.

These requirements apply to those graduates from jurisdictions within the United States of America and Canada. For candidates originating from other areas outside the USA and Canada, there are additional requirements as outlined in Psy 2.13. Your degree must be evaluated by a degree evaluation service which is a member of NACES such as the World Education Service. In addition, you may be required to pass an examination of English proficiency.

ARE RETIRED PSYCHOLOGISTS STILL ABLE TO PRACTICE?

For retired psychologists, pro bono work is acceptable as this does not constitute the “practice of psychology” since it is not being done for a fee per stats 455.01 (5). However, title restrictions do apply in these circumstances as the person is no longer licensed by the state (see Stats 455.01 (7)(a) and 455.02 (3m)).

Continuing Education requirements also apply to retired psychologists. These are outlined in Ch. Psy 4.02(1)(h) through (i).

CAN I WORK IN WISCONSIN WITHOUT A WISCONSIN LICENSE IF I’M LICENSED IN ANOTHER STATE?

There is a temporary practice provision in Wisconsin statute that allows psychologists licensed in other jurisdictions to practice on a temporary basis in Wisconsin. For temporary practice to be allowed, the psychologist must have equivalent or greater license requirements in the jurisdiction of origin. The Wisconsin Board of Psychologists interprets this as at least 2 years of supervised practice (at least one postdoctoral), a Ph D in psychology and passage of the EPPP exam. The psychologist may practice for up to 60 days in a calendar year and must notify the Board per statute (below) if practice is going to exceed 20 days. See Stats 455.03 for more information on temporary practice.

EDUCATION

HOW DOES ONE FIND OUT IF A SCHOOL IS ACCREDITED?

Stats 455.04(1) states that a Ph.D in Psych must come from a college or university accredited by a regional accrediting agency. Nationally approved accrediting agencies can be found at http://www.ed.gov/admins/finaid/accred/accreditation_pg6.html, while the programmatic accreditation comes from the APA. Programs accredited by the APA can be found at <http://www.apa.org/ed/accreditation/>

SUPERVISION

CAN A TRAINEE HAVE ONLY ONE SUPERVISOR?

No. In order for the trainee to have diversity in training, they may be supervised by several licensed psychologists with different levels of expertise. This is noted in Psy 2.09 (3)(a)(5).

While the trainee can have several supervisors, the primary supervisor that is specified in Psy 2.09(3)(a)(2) and (3) will be the responsible party for the quality of the trainee's overall work.

WHEN DOCUMENTING THE NUMBER OF HOURS OF SUPERVISED EXPERIENCE, WHAT SERVICES COUNT TOWARD "FACE-TO-FACE CLIENT CONTACT HOURS" AND WHAT SERVICES COUNT TOWARD "DIRECT SERVICE HOURS"?

"Face-to-face client contact hours" are those spent working directly with your client. "Direct service hours" are those activities a psychologist performs that support the provision of face-to-face client contact hours. As described in Psy 2.09(3)(a)(9), examples of direct service hours include note and report writing, studying test results, case consultations and reviewing published works relating to the client's needs. Direct service hours do not include face-to-face client contact hours.

CAN A TRAINEE RECEIVE PAYMENT FOR SERVICES PROVIDED DURING HIS OR HER SUPERVISORY TRAINING PERIOD?

Per Psy 2.09 (3)(a)(8), "The trainee must inform potential clients in writing of his or her trainee status, lack of license, and of the possibility that insurance companies may not reimburse services rendered by the nonlicensed trainee. Fees for client services may neither be billed independently nor accepted by the trainee." Trainees may not direct bill or charge for services and receive payment directly, however this is not to say that the clinic in which they work can't bill for services and then pay the trainee as a service provider, with the caveat being that insurance carriers may choose not to reimburse for services provided by trainees. Please note that the Board does not regulate or provide information about billing/business practices, proper coding, etc. Professional associations and practice mentors are a more appropriate resource.

WHAT IS WITHIN THE SCOPE OF PRACTICE OF A PSYCHOLOGY TRAINEE/INTERN?

If the supervising licensed psychologist has sufficient training and experience in treatment of a particular disorder, they can train the resident intern in that area and the resident intern can provide those services (under supervision). See standards of supervised training outlined in Ch. Psy 2.09 for additional information.

CAN SUPERVISION BE OBTAINED THROUGH AN OUTSIDE CONTRACT?

Psy 2.09 (3)(b) notes that Supervisors shall not be a relative by blood or marriage nor be involved in any other dual relationship which obliges the supervisor to the trainee. Paying a supervisor creates a dual relationship. Therefore, if a supervisor is in a paid contract with the trainee, this would create a dual relationship.

CAN UNLICENSED PERSONS PROVIDE PSYCHOLOGICAL SERVICES?

Under the exceptions listed in Stats. 455.02 (2m)(b) a person may provide psychological services as directed by a psychologist who has the power to direct, decide and oversee the implementation of the services provided. In this sense, the services would be provided under the license of the psychologist and therefore any discipline that would be raised against the unlicensed individual would be reflected under the license of the supervisor.

FEES/REFERRALS

FEE SPLITTING FOR REFERRALS – IS THIS ACCEPTABLE?

While the rules do not explicitly prohibit this, Psy 5.01(22) does provide guidelines as to the appropriate process for fee splitting. If the client is aware of the entire financial picture it is acceptable to charge a client directly for a referral and receive a kickback. By knowing the entire picture the client must know who is involved, how an amount is determined and the actual dollar figure

ARE FEES AND FEE DISPUTES REGULATED BY THE PSYCHOLOGY EXAMINING BOARD?

No, the board does not intercede in disputes involving issues such as fee disputes. However, the Wisconsin Psychological Association's Professional Issues Committee and its Ombudsman do respond to inquiries regarding disputes between professionals, ethics concerns regarding psychologists who are WPA members, and issues such as fee disputes. See the “Organizations” page for information on the WPA.

ETHICS

IS THERE A REQUIREMENT FOR ME AS A CREDENTIALLED PROFESSIONAL TO REPORT UNPROFESSIONAL CONDUCT BY ANOTHER MEMBER OF MY OWN PROFESSION?

No. Child abuse must be reported, and the reporting of sexual abuse by a therapist must be discussed with the victim, but mandatory reporting of unprofessional conduct has not been added to the Code of Professional Conduct. There is a statute, section 440.042 (2), that encourages people to report unprofessional conduct by a grant of civil immunity (“any person who in good faith ... provides the department or any examining board ... with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability”) but a credential-holder is not subject to disciplinary action for failing to report unprofessional conduct by another.

CAN OUT OF STATE CREDENTIALS BE USED IN MARKETING MATERIALS SUBMITTED IN WISCONSIN?

Title protection language found in Wis. Stats. 455.02 specifies that the use of the title “psychologist” or “licensed psychologist” requires the Wisconsin license. Likewise, Psy 5.01(1) contains standards for conduct in advertising. This appears to prohibit the use of out-of-state credentials in Wisconsin sales materials.