Ethical & Legal Dilemmas in Counseling Substance-Using Youth in CT

Minor Consent for Substance Use Treatment

Dilemma: Minors can legally access treatment without parental consent (referred to as giving "assent" vs "consent") which can conflict with parental rights regarding the welfare of their children, and to make decisions on their behalf.

***Connecticut Law**:* Conn. Gen. Stat. §17a-688 allows minors to seek substance use treatment (including nicotine and THC counseling) without parental consent and prohibits disclosure to parents without the minor's written consent.

ACA Code of Ethics:

- B.1.c. Respecting Client Rights (Confidentiality): Minors who legally consent to their own treatment are entitled to confidentiality, meaning parents cannot demand to know the content of sessions.
- B.5.b. Responsibility to Parents and Legal Guardians**:** Counselors must inform parents/guardians about the nature of the relationship, balancing this with the minor's rights, while fostering collaboration when appropriate.

Confidentiality vs. Parental Notification

Dilemma: When minor clients can access care independently and have legal rights to confidentiality it can conflict with the benefits of family involvement for treatment success.

Connecticut Law: Conn. Gen. Stat. §17a-688 (c/d) (substance use services) and §19a-14c (mental health services) limit disclosure of minor treatment records when the minor consents to care, with the exception of the client being in imminent danger.

ACA Code of Ethics:

- A.1.c. Support Network Involvement**:** Counselors involve family in treatment when it is beneficial and safe, specifically aiming for treatment success
- A.2.d. Inability to Give Consent: Counselors should seek the assent of minors, balancing their right to participate in decisions with the legal rights of guardians.
- B.2.a. Serious and Foreseeable Harm & Legal Requirements: Confidentiality is paramount but must be broken if necessary to prevent serious, foreseeable harm.
- B.2.e. Minimal Disclosure: If a situation arises where you *must* talk to a parent (e.g., a safety emergency), you reveal only the mental health risk and continue to shield the substance use history if the minor has not consented to its release.
- B.5.a. responsibility to Client's Privacy: Counselors must protect the confidentiality of minor clients, adhering to relevant laws and policies.
- B.5.b. Responsibility to Parents: Even when treating a minor privately, you still have an ethical duty to "work to establish, as appropriate, collaborative relationships with parents." You must constantly re-evaluate if it has become appropriate to involve parents.
- B.5.c. Release of Confidential Information: When releasing information for minors, counselors should obtain permission from the minor (if capable) or an appropriate third party

Duty to Warn / Protect

Dilemma: When youth disclose imminent safety risks with use clinicians must decide whether use presents a life-threatening risk that justifies overriding state confidentiality laws. There is ethical conflict when duty to warn parents of a substance use-related emergency could prevent harm, yet violates federal law.

> ***Connecticut & Federal Law:*** CT recognizes a duty to protect when there is serious, foreseeable risk of harm to the client or identifiable others. However, 42 CFR § 2.51 allows disclosure to *medical personnel only* during a substance-use related medical emergency. You cannot technically notify a parent or a school about the *nature* of the emergency (the substance use) without a court order or the minor's consent, even if the minor is unconscious, unless it is a life-and-death medical necessity.
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> ***ACA Code of Ethics*:**

- A.2.d. Inability to Give Consent: When a counselor *must* break confidentiality for safety, they should try to get the youth's "buy-in" (assent).
- B.2.a. Serious and Foreseeable Harm A counselor must use professional judgment. To decide if the minor's substance use is a life-threatening risk (such as driving intoxicated or using fentanyl).
- C.2.e. Consultations on Ethical Obligations**:** Because "foreseeable risk" can sometimes be a gray area (e.g., self-harm vs. active suicidal ideation), this standard encourages counselors to consult with peers or supervisors to ensure they are making the most ethical decision.

Financial Liability

Dilemma: Seeking payment for services from teenagers who have not consented to informing or involving parents in treatment can make it more challenging to obtain payment.

> ***Connecticut Law:***: Conn. Gen. Stat. §17a-688 states that the minor is personally liable for the costs and expenses of substance use treatment sought under this statute; providers cannot seek payment from the parent or guardian without the minor's permission.
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> ***ACA Code of Ethics:***

- A.2.a. Informed Consent: Counselors must explicitly tell the minor that they—not their parents—are responsible for the bill.
- A.10.a. Self-Pay and Fees: Counselors to discuss fees before or at the start of services including a realistic discussion of the minors' ability to pay and what happens if they cannot.

Insurance & Billing Privacy Risks

Dilemma: HIPAA permits minors who legally consent to treatment to control disclosure of related records, but Explanation of Benefits (EOBs) may inadvertently reveal treatment to parents/guardians

> ***Federal HIPAA Privacy Rule*** *45CFR* **§**164.522(b) gives minors consenting to treatment the "Right to Request Confidential Communications" when they wish to protect their privacy from

the primary policyholder (e.g., a parent or guardian). Minors may request Protected Health Information be sent via a requested address or method i.e. online portal.

ACA Code of Ethics:

- A.10.a. Fees and Business Practices: Counselors are required to inform clients about billing arrangements**.** This includes explaining how third-party payers (insurance) function and the potential for these entities to send records or statements to the policyholder.

- B.6.e. Counselors must protect client identity in all communications, including administrative and billing processes.

Mandated Reporting of Child Abuse or Neglect

Dilemma: Reporting suspected abuse/neglect to CPS requires breaking confidentiality, potentially harming trust. Including providing illegal substances to minor clients and allowing/providing other minors with substances in their homes.

Connecticut Law: Conn. Gen. Stat. §17a-101 designates counselors as mandated reporters of suspected abuse or neglect.

ACA Code of Ethics:

- A.1.a. Primary Responsibility: The counselor's primary obligation is to respect the dignity and promote the welfare of clients. In this dilemma, "welfare" is interpreted as physical safety over emotional privacy.
- A.4.a. Avoiding Harm: Counselors must act to avoid harming their clients. While a report may cause emotional distress, failing to report could lead to greater physical or systemic harm.
- B.2.a Serious & Foreseeable Harm
- B.2.e. Minimal Disclosure: When breaking confidentiality, counselors must only reveal the essential information needed to achieve the purpose of the report to preserve as much of the client's privacy as possible.
- B.5.a. Responsibility to Clients' Privacy

Co-Occurring treatment "Splitting"

Dilemma: While Connecticut law allows mental health providers to notify parents if they deem it "clinically appropriate," if that same minor is also being treated for SUD, federal law forbids mentioning the substance use.

Connecticut & Federal Law: Conn. Gen. Stat. § 19a-14c (Mental Health) allows providers to notify parents if they deem it "clinically appropriate." Federal law 42 CFR Part 2 forbids reporting substance use to parents without their written consent.

ACA Code of Ethics*:*

- **B.1.c. Respect for Confidentiality:** Because both CT Law (Conn. Gen. Stat. § 17a-688) and Federal Law grant the minor the sole power to release records, the counselor is legally bound to uphold this "wall," even against the parents' wishes.

- **B.5.a. Responsibility to Clients Privacy**: Here, the laws are so restrictive that the counselor must prioritize the minor's legal privacy over parental involvement

Prenatal Exposure & Reporting

Dilemma: Working with pregnant minors who use substances, can require legal reports if they're seen as endangering their child welfare.

> ***Connecticut Law:*** If a pregnant minor discloses substance use, reporting obligations may arise if there is suspected abuse or neglect under §17a-101 or if prenatal exposure is seen as maltreatment under child welfare law.
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> ***ACA Code of Ethics:***

- B.2.a Serious and Foreseeable Harm) Counselors must comply with laws protecting clients and others (including infants).

School Coordination & Educational Privacy (FERPA)

Dilemma: Sharing information with school personnel could support a youth's academic and personal functioning but this is blocked by educational privacy requirements.

> ***Federal Law:*** FERPA governs educational records in school settings; confidentiality of clinical records must be maintained unless proper consent is obtained. 42 CFR Part 2 also prohibits sharing SUD info with the minor's school counselor or other staff without a specific, written consent from the minor
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> ***ACA Code of Ethics:***
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> B.3.d (Confidentiality in Schools and Settings). Share client information only with valid consent or justified legal/ethical grounds.

Medical Coordination

Dilemma: While ethical guidelines encourage counselors to reach out to medical providers to coordinate care, federal law prohibits the counselor from sharing potentially valuable SUD info with the minor's primary care doctor without the client's written permission, potentially creating "siloed care." In the case of medication interactions or health problems caused by use, which can risk harm.

> ***Federal Law:*** 42 CFR Part 2 prohibits sharing SUD info with the minor's primary care doctor without a specific, written consent from the minor.
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> ***ACA Code of Ethics:***

- A.1.b. Medical Consultation. Counselors should coordinate services to promote client welfare. However, federal law creates a "silo" that prevents sharing SUD info with the minor's doctor.

- A.4.a. Avoiding Harm: If a counselor knows that withholding SUD information from a primary care doctor could lead to medical complications for the minor, they are in a "harm" dilemma.

- A.7.a. Advocacy. Counselors are ethically obligated to advocate for the client's well-being. If the "silo" is preventing the minor from receiving safe medical care (e.g., a doctor unknowingly prescribing a medication that interacts with the minor's substance use), the counselor has an ethical duty to advocate for the minor to sign a release for their own safety.
- B.2.e. Minimal Disclosure. If the minor *does* give permission, this standard dictates that the counselor should only share the specific SUD information necessary for the doctor to provide safe care, rather than the entire clinical record.
- B.5.a. Responsibility to Clients Privacy. Explicitly protects the minor from parental/medical disclosure.
- D.1.b. Forming Relationships: Interprofessional collaboration is encouraged, yet nearly impossible without the minor's explicit written permission.

Legal & Court Involvement

Dilemma: Subpoenas or court orders may seek access to counseling or treatment records for minor clients, causing counselors to be caught between the legal authority of the court conflicting with state and federal laws and ethics re: confidentiality.

> ***Connecticut & Federal Law:*** There is a major distinction between a subpoena (from an attorney) and a court order (from a judge). Psychiatrist-Patient Privilege (§ 52-146c through § 52-146i) applies to all licensed mental health providers (LPC, LCSW, LMFT etc) designating all communications with patients privileged, An attorney's subpoena cannot compel you to release records unless it is accompanied by a signed ROI from the client and you're legally required to wait for that consent or a judge's order. Under federal law 42 CFR Part 2, a counselor very specific "Special Court Order" is required that proves the "public interest" outweighs the damage to the therapeutic relationship. Per § 52-146f, counselors can ask the judge for an "In-Camera Review" entailing the judge reading the records in their private chambers first.
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> ***ACA Code of Ethics:***
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> B.2.d. Court-Ordered Disclosure: When ordered by a court to release confidential information without a client's permission, counselors must seek to obtain written, informed consent from the client (or guardian). If consent is refused, the counselor must take steps to prohibit the disclosure or have it limited as narrowly as possible.
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> B.2.e. Minimal Disclosure: If you *must* turn over records, you are ethically bound to release only the essential information. You should not hand over a "data dump" of every session note if a summary will suffice to meet the legal requirement.

GENERAL SUGGESTIONS for all ethical & legal dilemmas:

- Implement Informed Consent (ACA A.2.a) by using a **multi-party Release of Information (ROI)** during the initial intake, explaining implications of treatment, including confidentiality limits, in a manner the client understands.
- **Seek consultation** with colleagues, supervisors and legal experts, and document this (ACA C.2.e), when ethics and laws are in conflict with each other.

Primary Legal References: Conn. Gen. Stat. §§17a-688, 19a-14c, 17a-101; HIPAA; 42 CFR Part 2; ACA Code of Ethics (2014).

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