

Privilege and Confidentiality

written by Richard Leslie | May 24, 2016

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... It is important to know the difference between confidentiality and privilege. If you do, you will be less likely to get into trouble. The terms are often used interchangeably, but they shouldn't be. Confidentiality is both a legal and ethical duty not to share information about the patient with third parties without the signed authorization of the patient or unless disclosure is required or permitted. Privilege (e.g., psychotherapist-patient and other recognized privileges) involves the right to withhold testimony or records in a legal proceeding. When the issue of privilege arises, that typically means that records are being subpoenaed or the therapist has received a subpoena to appear in court or at a deposition.

In most states, a parent or the parents would be the one(s) who would sign an authorization form in order to release the records of, for instance, a ten-year old patient. However, if a subpoena for records were served, the therapist would not typically seek the authorization or waiver from the parent, but rather, the therapist would assert privilege on behalf of the holder of the privilege, who may be the minor. Whether or not a child is the holder of the privilege in your state of practice is a matter of great significance, especially in custody and visitation proceedings. Do you know who holds the privilege? Again, confidentiality and privilege should be distinguished when responding to particular situations. The failure to do so can lead to trouble for the unsuspecting therapist.