No More Silence: on NPR, Professor Ewing Explores the Limits of Professional Confidentiality

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No more silence

On NPR, Professor Ewing explores the limits of professional confidentiality

When is it ethically responsible to breach a professional confidence in order to prevent an outbreak of violence? That was the topic on National Public Radio’s Talk of the Nation program on Aug. 13, and SUNY Distinguished Service Professor Charles Patrick Ewing, a forensic psychologist and attorney, was the featured guest.

Speaking from the studio of Buffalo radio station WNED with host Lynn Neary in Washington, D.C., Ewing talked from experience about times when colleagues have asked him for advice in difficult ethical situations. A partial transcript of his comments follows; to listen to the NPR program, go to www.npr.org/2012/08/13/158703291.

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A few years ago, a psychologist from another state contacted me and wanted legal advice. He’d been seeing a patient who was injured in an accident and had a personal injury suit that was taking a long time in the courts. And as the psychologist was treating this man, over time, the man became increasingly obsessed with getting his case settled, said that his lawyer was thwarting that. He began to make statements about making the lawyer pay, getting the lawyer, taking care of the lawyer.

One day, the patient came in and announced that he knew where the attorney lived, because he’d been following him. And then about a week later, he told him that he had purchased a gun, and he planned to use it to do whatever it took to make his case get going, in his words. The psychologist believed, at that point, that the patient may have been planning to shoot the lawyer. He was under no legal duty to warn. He was under a legal duty to keep this confidential. And his question to me was: What do I do?

What we had here was two competing interests. One is confidentiality, the relationship between the psychologist and patient, on the one hand; and on the other hand, the safety, perhaps even the life of another human being.

There are a number of judgment calls you have to make. One is: Is this a serious threat? Is it a threat that’s made against a specific person? And is the threat imminent?

To me it was a no-brainer, both legally and ethically. Ethically, I think we all value life over principles, even deeply held principles such as confidentiality.

And legally, I told him that I could not imagine a jury or a licensing board taking negative action against him if he made this report and violated the confidence of his patient. But I did tell him that I could imagine that with creative lawyering and creative judging, he could be held liable in the long run if he didn’t take some reasonable steps to protect the attorney’s life in this case.

I’ve been in this field for 30 years, and I’m constantly making decisions about whether someone poses a danger to self or others. But most mental health professionals, most psychologists, psychiatrists, psychotherapists, have little to no training and little to no ability to make those kinds of judgments. That’s part of the problem with these laws: We’re imposing a duty where we really believe people can do what they can’t do, and that is predict the future.

The key is notifying the patient up front before the relationship begins that there are limits to confidentiality. So if a patient tells you about information that leads you to believe that a child’s being abused or has been abused, all bets are off in terms of confidentiality. The best way to handle it is to give the patient a laundry list right from the start, saying these are the instances in which there will be no confidentiality. And interestingly, I found in my own practice that it really didn’t make any difference in terms of what people revealed to me.

These laws require us in the mental health professions to take reasonable steps to prevent the harm from occurring. I can’t think of an instance in which I or one of my colleagues has contacted the individual who’s threatened directly. I think it’s much better, much safer to contact the police.

“We all value life over principles, even deeply held principles such as confidentiality.”

– SUNY Distinguished Service Professor Charles Patrick Ewing