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Confidentiality Rights and Principles for a *Psychologist as Client* in the State of Oregon

I. Confidentiality Principles and Oregon Reporting Laws

The following information relates to the confidentiality rights of a psychologist in a confidential therapeutic relationship with another psychologist, in the state of Oregon. Confidential and privileged information should be guided by the following principles:

Consent: Psychologists may share information as is lawful and ethical based on client consent.

Mandated Reporting: No mandated reporting is required within a confidential therapeutic relationship between a treating psychologist and a psychologist as client. A treating psychologist is not required to report another psychologist-client to OBPE or anywhere else, if they are in a confidential therapeutic relationship with that psychologist-client.

Permissive Disclosures: Oregon law allows for the disclosure and reporting of information obtained in a confidential therapeutic relationship under the provisions contained in ORS 40.252, Communications Revealing Intent to Commit Certain Crimes. These are called permissive disclosures. Permissive disclosures are discretionary disclosures, meaning disclosure is not mandatory. Psychologists are encouraged to consider all possible options, and consult, prior to exercising permissive disclosures. *ORS 40.252* permits reporting if there is clear and serious intent to:

(A). Commit a Subsequent Crime Involving:

1. Physical Injury,
2. Threat to the Physical Safety of any person,
3. Sexual Abuse. This is defined as unlawful sexual contact. Unlawful means that it was not consensual. A person is considered incapable of consenting to a sexual act if the person is:
  - (a) Under 18 years of age;
  - (b) Mentally defective which means that a person suffers from a mental disease or defect that renders the person incapable of appraising the nature of the conduct of the person;
  - (c) Mentally incapacitated which means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense because of the influence of a controlled or other intoxicating substance administered to the person without the consent of the person or because of any other act committed upon the person without the consent of the person; or
  - (d) Physically helpless. A lack of verbal or physical resistance does not, by itself, constitute consent.
4. Death or
5. Intends to Kill or Torture an Animal.

(B). The provisions of this section do not create a duty to report any communication to any person.

*Note: ORS 40.252* relates specifically to the intent to commit a crime and the client must pose a danger of committing those acts in the future. *ORS 40.252 does not permit the reporting of past crimes or ethical violations.*

*Note: ORS 40.252* applies to all Oregon psychologists. Psychologists working in public settings also fall under *ORS 179.505(12)*, which provides a similar permissive disclosure provision, wherein a psychologist working in a public setting *may* choose to report information obtained in the course of diagnosis, evaluation or treatment of an individual that presents *a clear and immediate danger* to others or to society.<sup>i</sup>

## II. OPA Survey Data and Clarification of Ethics Principles and Oregon Law

OPA survey data from two 2009 online surveys of OPA members indicate that the primary ethical infraction that psychologists would incorrectly report for their psychologist-client would be sexual behavior between a psychologist and an adult client. Although this behavior is clearly against the ethical standards of Oregon psychologists, this behavior is not reportable if learned about within a confidential therapeutic relationship. It would in fact be contrary to Oregon law to report a psychologist-client for this behavior if learned about within a confidential and privileged therapeutic relationship, unless it met the specific standards for permissive disclosures as defined in *ORS 40.252* (must meet standards of *intent to commit a crime*) or additionally for public employees as defined in *ORS 179.505(12)* (must meet standard of *clear and immediate danger*).

Another unethical behavior that many survey respondents cited as behavior they would report concerns learning of a psychologist client's fraudulent financial practices. Fraudulent financial practices are not reportable behaviors in past or present if they are learned about in a confidential relationship, unless they meet the requirements for permissive disclosures as discussed above.

## III. Clarification on APA 1.05 Reporting Ethical Violations

One of the points of confusion discovered in the OPA online survey was that psychologists believed if their psychologist-client was causing harm or substantial harm to another person or to a client, this would need to be reported. While it may be difficult for a psychologist to observe a psychologist-client engaged in unethical behavior that is causing harm, a psychologist-client engaged in ongoing unethical or illegal behavior is not reportable, unless it meets the requirements for permissive disclosures as discussed above.

The 2002 APA ethics codes states that If an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for informal resolution under *Standard 1.04, Informal Resolution of Ethical Violations*, or is not resolved properly in that

fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, to state licensing boards, or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or when psychologists have been retained to review the work of another psychologist whose professional conduct is in question.

#### IV. Child Abuse Reporting

If the psychologist-client is engaging in any activity that constitutes child abuse, and the information is learned of in a privileged setting with another psychologist (i.e. a confidential communication for the diagnosis or treatment of a mental or emotional condition) then the treating psychologist is not *required* to report suspected child abuse. As this is a complex issue, OPA strives to provide ongoing continuing education on this topic.

#### V. Clarification on HB 2059

Many psychologists have heard about HB 2059, which becomes law on January 1<sup>st</sup>, 2010. HB 2059 states that unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, an Oregon health professional licensee who has reasonable cause to believe that another health professional licensee has engaged in prohibited or unprofessional conduct shall report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting licensee shall report the conduct without undue delay, but in no event later than 10 working days after the reporting licensee learns of the conduct. Unprofessional conduct means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee's profession or conduct that endangers the health, safety or welfare of a patient or client.

Please note that HB 2059 specifically protects information disclosed in confidential settings and does not alter the right for psychologists to receive confidential psychotherapy.

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<sup>i i</sup> (g) "Public provider" means:

- (A) The state institutions for the care and treatment of individuals with mental illness or developmental disabilities operated by the Department of Human Services;
- (B) Department of Corrections institutions as defined in ORS 421.005;
- (C) A contractor of the Department of Human Services or the Department of Corrections that provides health care to individuals residing in a state institution operated by the Department of Human Services or the Department of Corrections;
- (D) A community mental health and developmental disabilities program as described in ORS 430.610 to 430.695 and the public and private entities with which it contracts to provide mental health or developmental disabilities programs or services;
- (E) A program or service provided under ORS 431.250, 431.375 to 431.385 or 431.416;

(F) A program or service licensed, approved, established, maintained or operated by or contracted with the Department of Human Services under *ORS 430.630* for individuals with developmental disabilities and individuals with mental or emotional disturbances;

(G) A program or facility providing an organized full-day or part-day program of treatment that is licensed, approved, established, maintained or operated by or contracted with the Department of Human Services for alcoholism, drug addiction or mental or emotional disturbance; or

(H) A program or service providing treatment by appointment that is licensed, approved, established, maintained or operated by or contracted with the Department of Human Services for alcoholism, drug addiction or mental or emotional disturbance.