



Innovations in Counseling: Working with Minority Populations- Part 2
Session 2: Managing Clients at Risk for Suicide or Violence: Legal and Ethical Issues

Webinar Follow-up Question and Answer Session with Theodore Remley

The contents of this seminar and written materials are educational in nature and do not constitute legal advice related to specific situations. In the event legal advice regarding specific circumstances is needed, participants are advised to consult with their employer's attorney, or, if in private practice, with an attorney they have retained.

1. Question from Lenice Frazatto

What is the usefulness of "life contracts," "no-harm contracts," or "commitment to treatment contracts?"

Answer from Presenter

The literature is divided on whether such contracts are even therapeutic. Generally, most experts believe they are not effective in deterring at risk clients from attempting suicide. From a risk-management perspective, in my opinion, the use of them is a very bad idea. If a counselor is concerned enough to have a client sign such a document, the counselor probably should insist on the client having an evaluation performed. A better approach is to document in case notes you do not believe the client is presently at risk and give reasons why and then enlist the involvement of parents/guardians/family members or friends (if the client is an adult).

2. Question from Michael Bronner

What is the Texas law around Tarasoff?

Answer from Presenter

Without getting into details, generally the case law in Texas has held that counselors have no duty to warn intended victims. However, Texas counselors do have the duty to prevent harm in the event they believe a client may be at risk of harming others. Preventing harm can be accomplished without warning intended victims. Reports to police, for example.

3. Question from Emily Holm

I am wondering how to handle a situation if you are in a private practice (no supervisor) and a child/teen calls the office and reports self-harm and suicide ideation?

Answer from Presenter

I would suggest the best approach would be to immediately contact the child's parent or guardian and get a commitment from the person to handle the emergency. If that is unsuccessful, I think calling 911 and reporting the situation would be called for.

4. Question from Sabiha Vahidy

Do you have any recommendations for resources for professional liability insurance?

Answer from Presenter

I recommend the policy offered to members by the American Counseling Association.

5. Question from Natasha Nunes

Is a minor considered 18 in all states?

Answer from Presenter

The age of majority is determined by state statute. In almost all states, the age of majority is 18. However, there are sometimes circumstances that give adult status to those under 18. For example, some state statutes say a minor is emancipated under certain circumstances (legal marriage, an order from a judge, etc.).

6. Question from Robert McQuillen

If you conclude the client is not at risk and they attempt and succeed, doesn't that leave you more open to a lawsuit due to clinical judgment error?

Answer from Presenter

Not if the counselor has documented in his/her notes the steps he/she took to make the not at risk determination. It's scientifically impossible to predict suicide or suicide attempts. Counselors must follow standard procedures in assessing...and judges and juries know sometimes the warning signs are not present before a suicide attempt or completion.

7. Question from Rachel Drake

I'm having major ethical concerns with having the conversation with parents of my teenage clients that I found them "not at risk". This seems like a violation of the client's trust. I fully get that I have to speak with them when I believe they "may be at risk."

Answer from Presenter

If you do not notify parents or guardians that you had concerns about whether their child was at risk for suicide, but upon further questioning, determined the child was not risk; if you are wrong, the parents would have the basis of a negligence law suit if they later found out you had some concerns and never notified them. Counselors in situations like this should do everything possible to enlist the minor client's agreement and participation in telling the parents. In fact, the minor could tell the parents and then the parents could contact you to confirm.



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8. Question from Dawn Streeter

Do you recommend safety plans for those at risk for suicide until the client is able to be evaluated by an appropriate person? For example locking up potential weapons or dangerous chemicals etc.

Answer from Presenter

Yes, safety plans are important. But such plans should be agreed to by a third party (for minors, parents or guardians; for adults, family members or friends). It is unwise to have a safety plan than only the client knows about and has agreed to.

9. Question from Andrea Jordan-Lemma

I have never heard of calling family members and making them responsible for transferring a client to the hospital for evaluation. Does this vary by state?

Answer from Presenter

To my knowledge, there is no state statute or case law covering such situations. Counselors have a duty to ensure a possibly at risk client is evaluated. If that can be accomplished through parents or family members, then that is good option. If counselors believe parents or family members would not follow through, then the counselor must take additional steps.

10. Question from Lisa Taylor-Austin

Is there a specific assessment you prefer for suicide in private practice?

Answer from Presenter

No. There are many checklists published. I have not evaluated them to determine which, in my opinion, would be best.

11. Question from Jolene Nelson

How do you help a parent take a child's behavior seriously? I have a dad who sees his daughter's suicidal behavior as more of a manipulation.

Answer from Presenter

I believe a counselor can insist that a minor be evaluated and make that a condition to continuing to provide services for the minor. When stopping services is not an option (such as in a school situation), then making a suspected negligence report should be considered if the parent is unwilling to take action to have a minor evaluated.

12. Question from David Hollingsworth

Do we have liability for the actual referral?

Answer from Presenter

No. Counselors would be liable only if they knowingly referred to an incompetent practitioner.

13. Question from Mike Magnotti

Are there circumstances when you should call the police?

Answer from Presenter

Yes. If you cannot get a parent or guardian (in the case of a minor) or family member or friend (in the case of an adult) to agree to have the client evaluated, then you must get the client to an evaluator. Generally, I prefer calling an ambulance, but in some situations, the police must be called.

14. Question from Sharon Miles-Hastings

What do we do if the person does not take the client to get help?

Answer from Presenter

See question 11.

15. Question from Walter Vincent

Is there a sample of Written Guidelines re. Suicide/Self-Harm Policy?

Answer from Presenter

I'm not familiar with such a document off-hand. However, I imagine if you were to use Google, you could come up with published policies used in public or non-profit mental health facilities.

16. Question from Clara Varlese

When calling for an ambulance, how would you suggest wording the situation as to help prevent police involvement?

Answer from Presenter

In some jurisdictions, the police always come when an ambulance is called. So sometimes, it can't be avoided. However, if you say the client is not violent and is cooperative, there would be less chance of the police showing up.

17. Question from Gary Arthur

What if the someone who comes is a family member (child of the client) yet a minor-say 16 does this mean contacting someone else?

Answer from Presenter

Yes. Counselors always need an adult to take responsibility for an adult. Minors do not have the authority to means to get an adult evaluated.

18. Question from Nisha Talwar

When you are subpoenaed to the court, what are your rights as a clinician if you do not wish to disclose anything ?

Answer from Presenter

If your relationship with your client is privileged by state statute, you will not have to disclose anything unless there is a legal exception to privilege. A judge will determine that. An attorney from your agency (or hired if you are in private practice) can appear with you at depositions or hearings to which you are subpoenaed and make arguments that you should not be required to disclose information.

19. Question from Janet Bordenave

How are we supposed to obtain the name and address of the potential target of potential violence when a client only refers to them by first name?

Answer from Presenter

State statutes or case law that requires the notification of intended victims (it varies from state to state) always have the caveat that you must be able to reasonably identify the intended victim before the duty to notify him/her attaches.

20. Question from Lisa Taylor-Austin

I read all counseling notes are protected and do not have to be disclosed or shared without court ORDER (subpoena is a request for records).

Answer from Presenter

Generally, counselors should assume that a client's records are protected and should not be disclosed. Only if counselors are advised by their agency or private attorney that their notes must be disclosed should they provide the notes.

21. Question from Andrea Jordan-Lemma

How could we, as counselors, sign over liability to a family member for mental health care?

Answer from Presenter

See question 9.

22. Question from Kathleen Chabot

Does a private practice psychotherapist need to have the Release of Information from client or 'responsible person' to contact treating MD for psych evaluation?

Answer from Presenter

A release would not be required to seek an evaluation from a physician in an emergency situation. After the evaluation has been completed, a release from a client (or his or her parent or guardian) would be required to communicate with the treating physician.

23. Question from Candace Callaghan

Who do you send them to for an evaluation?

Answer from Presenter

That depends on your community. Some communities has teams at mental health facilities that will go to the client and perform an evaluation. In other communities, evaluations can be obtained only in a hospital. Each counselor has the duty to know how evaluations can be obtained in his/her community.

24. Question from Laurie Hartman

Could you clarify.... if you believe someone is at risk for suicide.... are you saying that a doctor or pa has to come immediately? Or can a family member come immediately? Would you then ask the family member to sign stating that they will take responsibility for getting their adult family member evaluated?

Answer from Presenter

In my opinion, the counselor has to get a parent or guardian (in the case of a minor) or a family member or friend (in the case of an adult) to take responsibility for the safety of the client and to obtain an evaluation of the client. It would be best to get that person not only to agree to take on that responsibility, but to sign a document saying that.

25. Question from Nisha Talwar

What is your feedback about a safety contract for clients?

Answer from Presenter

See question 1.

26. Question from Martin Gieda

Do you have any opinion on David Jobes' CAMS assessment?

Answer from Presenter

No. I'm not familiar with that instrument.

27. Question from Ida Duplechin

Online assessment vs. paper/pen assessment?

Answer from Presenter

It doesn't matter whether the assessment you use is verbal, online, or paper/pen. The important thing is that an assessment to determine whether a client may be at risk is performed by a counselor when the counselor determines there is a possibility that the client may be at risk.

28. Question from Edwardlyn Crishon

How long after termination of the counseling relationship should you keep records?

Answer from Presenter

That depends on state statutes, agency policies, and federal regulations. When there are no requirements, then 7 years is a good number of years because in most states the right to sue after injury usually is 7 years.

29. Question from Don Voeks

I am a domestic violence counselor. I see clients all the time who are potentially violent. How do I protect myself?

Answer from Presenter

You are in a much better position because of your experience to determine when a client who has been violent in the past may be violent again. If you believe there is a risk of your client harming someone right away, then you have to take action to prevent the harm. You should document in your notes if you do any kind of risk of future violence assessment and determine the client is not currently at risk.

30. Question from Patricia A Colahan Ireta

What if the client refuses to take a risk or suicide assessment?

Answer from Presenter

You would only ask a client to do that if some behavior or words had alerted you to the possibility of risk. If a client refuses to cooperate after you have developed a concern about the possibility of risk, then I think you have to determine that the client may be at risk, and take the steps necessary to get the client an evaluation.

31. Question from Bettina Shapira

What do you do if a client doesn't agree to the suicide assessment?

Answer from Presenter

See question 30.

32. Question from Priscilla Kang

What is the threshold for "may be" at risk?

Answer from Presenter

Your professional judgment based on everything you know about the client. Unfortunately there is no objective measure.

33. Question from Donna Pollard

How do you handle a client who may be at risk, is not admitted for hospitalization, and refuses to go to the referred psychiatrist?

Answer from Presenter

If a client has been evaluated at a hospital and not admitted, then you can assume the client is not at risk. To continue providing services to that client, I would suggest you get a release to confer with the treating physician who did the evaluation and determined that the client was not at risk. Your question to the physician is "Under what circumstances should I send the client back for another evaluation?" Document the answer in your notes.

34. Question from Jenna Leonette

What if you have the parent come to the school because you feel that the child is at risk and the parent does nothing after they pick the child up?

Answer from Presenter

In my opinion, the principal or school system should not allow the client back into school until an evaluation has been completed. However, many administrators and school systems do not enforce such a policy. As a result, you need to document in your notes that you have informed both parents and administrators regarding your concern. You should revisit your concerns with parents and administrators from time to time as well. Ultimately, you should consider filing a suspected negligence report.

35. Question from Will Ruff

What if you work in a rural area and a psychiatrist appointment is made but it is months later, how would you proceed in getting a quicker evaluation without hospitalization?

Answer from Presenter

I think the only alternative in such a situation would be for the client to be evaluated in a hospital emergency room.

36. Question from Patricia A Colahan Ireta

Is it better to contact the family first before contacting the ambulance?

Answer from Presenter

Usually, unless there is a dire emergency where the ambulance needs to be called before calling parents.

37. Question from Christy Kolb

A client attempted suicide 30 times before and now is saying she is feeling suicidal. I tried to get assistance for her and the hospital said no. What does a counselor do then?

Answer from Presenter

See question 33.

38. Question from Rose Metivier

What about risk of harm, not risk of suicide - for example, what is our responsibility if the client is at risk of self-harm (non-suicidal self-injury), drug risk, or high-risk behavior in the community where there is a potential risk of harm but not a clear risk of death?

Answer from Presenter

This would be a matter of professional judgment. If you determine that the risk could result in serious injury or death, then you must take action to prevent the harm.

39. Question from Kellin Defiel

I understand not contacting police if client is at risk for suicide, but if client is threatening others with violence, wouldn't it be most appropriate to inform the police, as well as the potential victim?

Answer from Presenter

Absolutely. When I said it is better if police are not present, that would be when there is no reason to have the police there.

40. Question from Richelle Joe

What steps do you recommend if the parents/guardians of a minor child who may be at risk fail to take the child for further evaluation?

Answer from Presenter

See response to item #34 above. If you are not in a school environment, then I suggest an evaluation be a condition for continuing to provide services to the minor...and that a report of suspected negligence be considered.

41. Question from Tracy Stenger

What is our responsibility when a hospital releases a client that we still believe to be at risk?

Answer from Presenter

See question 33.

42. Question from Ana Reyes

What if the person says they are suicidal, but they do not have the means or a plan, can you then use the safety contract?

Answer from Presenter

See question 1.

43. Question from Natasha Nunes

In reference to contracts... what do you do when the client's baseline is to be suicidal off and on? I have been told that I can only be responsible for what the client tells me in the moment. This is when I have been advised to use a do no harm contract.

Answer from Presenter

See question 1.

44. Question from Tracy Still

Regarding school counseling - are there any recommendations regarding liability insurance sources and coverage issues?

Answer from Presenter

The American School Counselor Association (ASCA) and the American Counseling Association offer low cost professional liability policies for school counselors.



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45. Question from Brian Cook

What about return to campus at a college level? Would you think there would be a difference? We currently require an evaluation and documentation to return at the cost of the student?

Answer from Presenter

I think what you are doing is a good procedure.

46. Question from Helen Dillard

What about referring an at risk client to a crisis counselor at the local mental health center for assessment?

Answer from Presenter

If the local mental health center performs such assessments and has the ability to hospitalize, that would be fine. But, if you have determined a client may be at risk for suicide, you must make sure the client gets evaluated...not just say you can get evaluated at the local mental health center.

47. Question from Lynn Meyer

From a legal perspective how does one handle self-mutilating behavior (e.g. cutting) in adolescents? Inform the client's parents even if it's superficial scratches?

Answer from Presenter

This is a matter of professional judgment. See response to item #38 above.

48. Question from Sherlon Brown

Are there any cultural issues that need to be considered when addressing risk of suicide and/or danger to others?

Answer from Presenter

Absolutely. All counseling should take into consideration cultural issues. For example a particular cultural group may tend to be verbally expressive and say things they do not really mean. Another cultural group may have a history of valuing saving face over life. Those factors should be considered when determining whether a particular client may be at risk for suicide or violence.

49. Question from Sandy Guergues

Besides documentation, what should I do if I report my suspicion of possible risk to my supervisor (per site policy) and the supervisor insists that there is no risk and that no further action is necessary?

Answer from Presenter

Document in your notes your interactions with your supervisor and follow his or her directives. In the event you believe the supervisor is incompetent, consider reporting the incident to your supervisor's supervisor or even finding another job.

50. Question from Jennifer Urbach

With regards to the safety contract. When a client discusses vague suicidality, and after further direct questioning you determine that they are not at risk, and document this all in the note, does this protect you?

Answer from Presenter

See response to item #1 above. I do not recommend using safety contracts. If a counselor determines a client is not at risk for suicide (despite some earlier indication the client might be), documenting that in notes would show why the counselor made his/her determination, which if done in an acceptable manner, would help protect the counselor if he/she were later sued.

51. Question from Meredith Lopez

Would an academic advisor need liability insurance?

Answer from Presenter

Not if the advisor's role is clearly not that of a counselor/mental health professional....and if the advisor avoids providing what might be considered mental health services.

52. Question from Tracy Still

How long would you recommend maintaining personal notes regarding students in a school setting?

Answer from Presenter

See question 28.

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