

Ethics, Suicide, Social Media, Confidentiality, and Values: What a dilemma!

Malvika Behl, Kyle Brezinski, Andrew Intagliata, and Juliet Russell

University of Toledo

Abstract

Ethical decision-making can be a complicated process that counselors face throughout their careers. The following paper discusses Jordan's ethical dilemma as she made some decisions as a counselor in training that deviated from the norm. Jordan violated ethical codes relating to confidentiality, social media, and putting forward her personal values. In this situation, the supervisor would also share responsibility for not protecting client records and discussing a client in a non-confidential setting. The paper also addresses the ethical decision-making model by Barnett and Johnson (2010) that would strategize the people affected by Jordan's decision, ethical and legal violations, and the best course of action for Jordan, her supervisor, and Toni (Jordan's supervisor's client).

Keywords: ethics, decision-making, suicide, confidentiality, social media

Ethics, Suicide, Social Media, Confidentiality, and Values: What a dilemma!

Counselors face ethical dilemmas throughout their careers that may require serious deliberation. These dilemmas may test the resolve of counselors, as ethics is a gray area with a variety of issues that could contain multiple courses of action. Even one ethical situation may include several layers that counselors must consider before rendering a decision. While it is beneficial to have the proper knowledge, skills, and resources when faced with an ethical dilemma, counselors may also turn to an ethical decision-making model to aid in this process. Ethics can be covered quite extensively in graduate programs, but in a review of ethical decision-making models Cottone and Claus (2000) propose that programs should include competent training in these decision-making models.

Jordan is a 58-year-old African American lesbian female who is in her first semester of her internship in a clinical mental health counseling program. Jordan overheard her clinical supervisor making prejudicial comments about a client named Toni, who is biologically a male but identifies as a female. Jordan, who is an advocate for lesbian, gay, bisexual, and transgender rights, decided to access Toni's mental health record and found that Toni is struggling with depression, anxiety, and suicidal ideation. Jordan, who has had previous similar issues, found Toni on Facebook. She invited Toni to join an advocacy group that Jordan runs in the community. Toni then saw Jordan at the internship site later and thanked Jordan for the information. Jordan then provided her cell phone number and personal email address to Toni, and said that Toni can "contact her [Jordan] at any time for help." Toni texted Jordan late one evening stating she was going to kill herself. When Jordan attempted to call and text Toni did not answer or respond, so Jordan left multiple messages. Jordan had not contacted her site supervisor due to his earlier prejudicial comments towards Toni, and did not reach out to her faculty

supervisor because Jordan had not revealed her sexual orientation to anyone in the counseling program.

Decision-Making Model

The authors looked at several ethical decision-making models and decided to use the nine-stage ethical decision-making model provided by Barnett and Johnson (2010). The ethics model is “Based on the best elements of several decision making models...” (Barnett and Johnson, 2010, p. 167-168). A model such as this helps encompass all spheres from the ACA Code of Ethics, the ethical principles, the law, regulations, and professional guidelines as well as the honest feeling of the person who is making the decision. The model is an in-depth step-by-step process for making an ethical decision by helping to strategize the dilemma. It helps provide vital strategies that would assist a counselor when facing in an ethical dilemma.

Step 1: Define the situation clearly

When counselors realize that they have reached an ethical dilemma, they can choose to consult an ethical decision-making model to help with this process. Barnett and Johnson (2010) propose that the first step should include articulating the problem and gathering as many relevant facts and details as possible. This allows counselors to not only identify the main areas of interest, but also to begin considering the ethical issues at hand and any obligations they may have (Barnett & Johnson, 2010).

There are five ethical issues that need to be resolved in the case of Jordan. First, Jordan had an ethical obligation to break confidentiality after Toni reported she was going to kill herself via text message. Jordan did not report this threat to anyone after being unable to contact Toni by phone, despite the fact that Jordan provided her cell phone number and email address to Toni and said that Toni could “contact her [Jordan] at any time for help.” Second, Jordan accessed Toni’s

mental health record despite the fact that Toni is actually a client of Jordan's supervisor. Third, Jordan looked up Toni on Facebook (a social media site) as a way of communicating with Toni outside of the agency. Fourth, Jordan's supervisor made comments about his clients out in the open where subordinates (such as Jordan) could overhear, and this breaks confidentiality. Fifth, Jordan had not reflected on her own personal values that may have played a role in how this particular situation unfolded.

A fundamental concern regarding this case relates to the fact that Toni is not technically Jordan's client, as she is the client of Jordan's supervisor. This makes approaching this situation unique, as there may not be as much guidance in ethical codes regarding confidentiality in situations that are not traditional or dyadic (Strein & Hershenson, 1991). However, Jordan provided her personal cell phone number and email address to Toni. The practice of giving out a home or cell phone number to clients, while not unethical, is not something on which all clinicians agree (Negretti & Wieling, 2001). In a review of best practices for using things such as text messaging, Sude (2013) writes that text messaging is becoming more popular with counselors. When Jordan gave Toni this additional avenue to contact someone for help, Jordan then assumed responsibility for responding to things such as suicidal threats.

Step 2: Determine who will be affected

The next step in this particular ethical decision-making model involves identifying primary clients and any possible secondary clients, and considering how the decisions of counselors may impact others (Barnett & Johnson, 2010). The person of primary concern with this particular scenario is Toni, the client who is receiving counseling services at the counseling center where Jordan is an intern. When evaluating a decision such as Jordan not reaching out to anyone after Toni made a suicidal threat, it is not just Toni but her family as well who may have

been affected by the situation. If Toni actually had completed suicide, then not only has one person lost her life but also Toni's entire family may be affected by her death. Jordan must also consider how her decisions, or indecisions, may affect her herself personally and professionally. Finally, this decision may have affected Jordan's supervisor, as Jordan became curious about Toni only after overhearing the prejudicial comments about Toni made by her supervisor.

Stage 3: Refer to both underlying ethical principles and the standards of the ACA Code of Ethics.

The ethical principles of beneficence, nonmaleficence, autonomy, justice, fidelity, and veracity were used as a guidance tool to make an informed decision (ACA, 2014). The paper is divided into two separate categories: the trainee's responsibility and the supervisor's responsibility.

Jordan reached out to Toni at the counseling center and provided her with Jordan's contact information. Toni later used Jordan's information to contact her and inform Jordan of Toni's potential suicide attempt. Jordan at that time did not contact her supervisor or faculty supervisor to disclose Toni's potential suicide attempt, even though counselors can break confidentiality in situations where clients might harm themselves or an identified other (ACA, 2014, B.2.a.). Jordan also advocated for Toni, a self-identified female who was not in counseling for her identity issues but instead for her depression, anxiety, and suicide. Even though Jordan was advocating for a client, in order to improve services provided counselors still need to obtain consent before advocating on behalf of clients (ACA, 2014, A.7.b.).

Jordan violated the client's privacy by finding and contacting Toni through social media, which is an ethical violation (ACA, 2014, H.6.c., H.6.d.). Unless there is a consent that states otherwise it is important to protect client's privacy on social media (ACA, 2014, H.6.c). Not

using social media to disclose confidential client information is vital to protect client privacy (ACA, 2014, H.6.d).

When Jordan contacted the client on social media about the advocacy, she seemed to think that Toni's issues of anxiety, depression, and suicide arose from Toni's gender identity issues. Jordan, who has reportedly had issues with her own sexuality, may have imposed her values on the client and overstepped her boundaries (ACA, 2014, A.4.b.). It is vital for counselors to be aware of "their own values, attitudes, beliefs, and behaviors" (ACA, 2014, A.4.b., p. 5), so that they can avoid these affecting their relationships with clients.

Another piece of Jordan's responsibility could be talking to her supervisor about the prejudicial remarks he made so that there could have been an informal resolution about his behavior (ACA, 2014, I.2.a.). Jordan's supervisor was discussing Toni's information in a setting that violated the client's confidentiality (ACA, 2014, B.3.c.), because Jordan was able to overhear the conversation. The supervisor should also have provided Jordan with ongoing supervision to discuss her responsibilities about maintaining client confidentiality and privacy (ACA, 2014, B.3.a.). Jordan accessed Toni's records when Jordan had no right to do so, and then ended up contacting Toni. The supervisor in this case was unable to maintain confidentiality of client records and documents, and that confidentiality requires records be kept in a secure area where only authorized personnel have access (ACA, 2014, B.6.b).

Stage 4: Refer to relevant laws/regulations and professional guidelines

The Health Insurance Portability and Accountability Act of 1996 (HIPPA) was intended to assist health care providers in protecting the health records of their patients. Protected information includes details that could personally identify a patient, which includes diagnosis.

There were two main HIPPA issues in this case, with the major issue being Toni's

disclosure of suicidal intent. HIPPA (1996) discusses situations where releasing information is appropriate and allowable. Specifically when there is a serious threat to health or safety then the entity may release this information. While HIPPA does not require release of information when there is a threat of harm, they do allow the disclosure. A review of federal law indicates that there is no one section that discusses a mandatory obligation to report suicidal intentions or threats, leaving these issues for the states to decide on their own. Each U.S. state does legislate involuntary commitment, but they vary in who may make this referral. In this case, Jordan had the right to report the suicidal threat, but did nothing.

The other issue was Jordan accessing Toni's protected health information without cause. According to the Minimum Necessary rule (HIPPA, 1996) health care providers are required to mitigate the incidental release or access of this information by putting into place policies and procedures limiting when and how much of this information is released. This would indicate that her supervisor should have provided some level of training before she became an intern at the program site. Assuming that this training did occur, Jordan would have been aware that it was inappropriate for her to access any private medical records without a valid treatment-related reason. By circumventing this process and ignoring this rule Jordan placed herself in a precarious position. Additionally, if a person within the institution does not have a treatment-related reason to access patients' records then this would be considered an unauthorized disclosure, which carries legal penalties including a fine of \$50,000 and up to one year in prison. These penalties increase as the intention becomes more malicious (HIPPA, 1996).

As it applies to this case study, there was no medical reason that would have required Jordan to access the protected medical health records of Toni, which was a violation of the Minimum Necessary portion of the HIPPA (1996) rule. Additionally, Jordan failed to notify her

supervisor immediately when she was informed about the suicidal intentions of Toni. HIPPA (1996) allows for the reporting of this to persons outside of the mental health facility. While Toni was not a client of Jordan's, she was a client of the agency and was under the direct care of her supervisor. Jordan placed herself in the position of being somewhat responsible for Toni, which increases her responsibility for the care of Toni after she accessed that information.

Stage 5: Reflect honestly on personal feelings and competence

When making an ethical clinical decision it is appropriate to consider both personal bias (ACA, 2014, A.4.b) and level of professional competence (ACA, 2014, C.2.a). Jordan was at the first level of her training as a master's internship student. At this level she was under the supervision of both a clinical supervisor and a faculty supervisor, which indicated that her professional competence was at a very basic level. Jordan also appeared to have experienced some level of countertransference due to both her own experiences as a lesbian and her emotional experiences, which were similar to the symptoms indicated in Toni's medical records. Jordan failed to consider her competence level or her bias when she decided to make personal contact with Toni. If Jordan had taken the time to consider the ACA ethical codes she would have been able to step back and consider her own bias and competence level. Instead, Jordan made a decision to contact and provide personal information to an agency client without considering the implications of her decision. This decision created a situation that could have been avoided if she had followed an ethical decision-making model.

Stage 6: Consult with trusted colleagues

Consultation can be an integral part of the counseling profession. Sheridan, Welch, and Orme (1996) describe consultation as being a problem-solving process that is directed at confronting the concerns brought by a client between two professionals. Jordan did not consult

with her supervisor because she was upset about the prejudicial comments he made about his client. In a case like Jordan's, consultation could have been used to help Jordan process her thoughts and feelings towards her supervisor. This could have potentially avoided Jordan from acting on her emotions and going behind her supervisor's back to acquire his client's contact information.

After Jordan contacted her supervisor's client and discovered via text message that the client had threatened to commit suicide, Jordan still did not contact her site or faculty supervisor. Jordan reportedly was afraid of her supervisors finding out she was a lesbian as she had not come out to either. However, this does not trump the serious and foreseeable harm and legal requirements of the ACA Code of Ethics, which is described as a counselor's duty to keep all information confidential unless it requires disclosure of information to protect the client from serious and foreseeable harm (ACA, 2014 B.2.a). Jordan's action of keeping the client's situation hidden in order to protect her own status is a clear ethical violation of the ACA Code of Ethics.

Stage 7: Formulate alternative courses of action

When making ethical decisions it is important to consider other alternative courses of action. Jordan should have informed someone of the suicidal threat Toni made via text message after Jordan was not able to get in contact with Toni by phone. Even before any of this happened, when Jordan first overheard her supervisor's prejudicial comments towards his client she chose to act by obtaining the client's confidential files at the agency and acquiring the client's information. Another course of action Jordan could have taken was speaking with her site supervisor about the comments made towards his client. In this instance, Jordan would not have gone behind her supervisor's back to reach out to the client.

An alternative option for Jordan instead of discussing the issues with her site supervisor

could have been reporting the supervisor to the director of the agency or the licensure board. Jordan's supervisor discussed Toni and her confidential information in an area where Jordan (a subordinate) was able to overhear. Counselors should be aware of their surroundings when discussing confidential client information (ACA 2014, B.3.c.). When discussing these issues, counselors should be in a private area behind closed doors so there is no accidental release of private information.

Lastly, Jordan was in an internship experience for her university's counseling program. She had the added benefit of having a faculty supervisor with whom she had the ability to discuss issues with her placement site. Jordan could have explained to her faculty supervisor the situation that took place and received proper advice on how to handle the situation. This again goes back to proper consultation between clinician and supervisor. Consultation may have saved Jordan from acting unethically on her emotions and placed the supervisor's client in a better situation.

Stage 8: Considering possible outcomes for all parties involved

All decisions carry an outcome, and when making an ethical decision it is important to consider how these outcomes will affect the parties. There are four parties involved in this ethical dilemma: Jordan, Toni, the supervisor, and the agency. If Jordan were to have spoken to her site supervisor about the prejudicial comments, Jordan may have been able to sit with the supervisor during supervision and worked together to better the client and Toni may have gotten proper care for her issues. Jordan may have then been able to form a closer relationship with her site supervisor now that he realizes how his prejudicial statements affected Jordan.

Jordan's site supervisor, regardless of the course of actions, discussed his client in an open environment where anyone could hear what was being discussed. The supervisor violated

the ACA Code of Ethics (ACA, 2014, B.3.c) because someone who overheard this discussion was able to identify the client. This type of violation could lead to various penalties depending on the state. Jordan also could have come to the supervisor first which may have led to a discussion at length about personal issues and how both Jordan and her site supervisor would be able to work through their personal values and biases (ACA, 2014, A.4.b).

Lastly, there would be separate outcomes for the agency than that of the supervisor. If Jordan would have spoken with her supervisor first then the agency's outcome would be minimal and it would be able to continue functioning and operating normally. Jordan could have also spoken to the director of the agency, and by doing so then those in charge of the agency may have been able to take a preemptive strike against the ethical dilemma. The administrators of the agency would have the ability to talk directly with Jordan's supervisor and work on personal biases and counselor competencies with the supervisor. If Jordan or her supervisor were incompetent because of a lack of training, then those at the agency could take the responsibility to train employees and interns regarding things like confidentiality and accessing records. Trainings such as these provided to an entire staff in attempts to avoid issues like these in the future would be very helpful for the agency. No one individual would be singled out for violating policy and instead it shows that those at the agency have the drive to better serve a wider population of clients. If it was not a training issue but rather a personal issue the supervisor held and he was unable to change his views, then those in charge at the agency could have the option to terminate employment of the supervisor because this shows the supervisor as unable to effectively treat all types of clients fairly. An effective remedy to biases from an employee of the agency would be especially important if clients similar to Toni will continue to be seen there.

If Jordan spoke with her internship supervisor from the university, then the faculty at the

university could end up pulling all their internship students out of that specific agency. Jordan's faculty at the university may also terminate their working contract with the agency thus making a significant negative impact on the agency's intern labor.

Stage: 9 Make a decision and monitor the outcome

Counselors placed in positions such as Jordan's would ultimately need to make a decision regarding the best option based on all of the information that was relevant and available (Barnett & Johnson, 2010). Using the nine-stage model proposed by Barnett and Johnson (2010), counselors would take responsibility for this decision, document all of the stages of the decision-making process, and monitor the effects even after the decision is made. There may be times when counselors need to modify or adjust their decisions in order to achieve the best outcomes for those involved in ethical situations (Barnett & Johnson, 2010).

Jordan could have contacted someone (site supervisor, faculty supervisor, proper authorities, etc.) after Toni made threats to kill herself and Jordan was not able to reach Toni by text messaging or phone calls. However, since Jordan did not contact anyone when these threats occurred, the next course of action could have been for Jordan to inform those at the agency involved in Toni's care so that someone may check on Toni. Toni may have signed a release of information for people involved in her care to contact a family member or friend who may be able to help her. If not, those involved in Toni's care at the agency might have been able to go through the appropriate channels to check on her.

Jordan, by informing someone of these threats, could then disclose to her supervisor that she gave Toni her personal contact information in case Toni ever needed help. The documentation of Jordan giving her contact information to Toni should have already been done, but after talking with her supervisor and being honest Jordan could then feel free to document

why she gave out her information. Jordan could be upfront with her supervisor that she both accessed Toni's record, and found and contacted Toni via Facebook. After talking with her supervisor about Toni and what Jordan knows, Jordan could then have an honest conversation about how she came to acquire knowledge about Toni's sexual identity. This could be an open conversation where Jordan's supervisor takes responsibility for talking about a client in an area where others can overhear (ACA, 2014, B.3.c.).

Finally, Jordan should reflect honestly on her values and attitudes. Jordan reportedly is an advocate for lesbian, gay, bisexual, and transgender (LGBT) rights. Also, one of the reasons why Jordan reportedly contacts Toni is because Jordan too has struggled with depression, anxiety, and suicidal thoughts, albeit for a different reason. While Toni is not a direct client of Jordan's, Jordan seems to possibly go through some countertransference with these sorts of issues. Jordan's supervisor making prejudicial comments about Toni might be an indication that he needs to work through some person biases as well.

Conclusion

The particular ethical scenario was a really interesting case because non-dyadic ethical issues may not be normally seen within counseling and addressed by ethical codes (Strein & Hershenson, 1991). There were numerous ethical problems at play with this scenario involving Jordan, Toni, and Jordan's supervisor. One end of these problems was the most severe ethical scenario in which counselors can be involved: a situation where a life or lives are at stake. Moving towards the other end of the spectrum were things such as accessing confidential records, maintaining client privacy and confidentiality, and using social media in an unethical way. However, of all of these ethical violations the one that may get overlooked is the fact that Jordan had not worked through personal issues related to depression, anxiety, and suicidal

ideation. Jordan is a lesbian who has not come out to anyone at her site or university and when she hears of a client who is biologically a male but identifies as female, she decides to contact the client.

Jordan not working through her personal issues is important because it seems like the end results of this scenario spread from this ethical issue. Jordan's supervisor made a prejudicial comment about one of his clients, and Jordan happened to overhear this comment. However, Jordan then made the decision to access Toni's records to find out more about Toni. Would Jordan have been willing to do this for any client about whom her supervisor made a prejudicial remark? Or was Jordan's judgment clouded by the fact that she seemingly has not worked through her own personal issues? If Jordan had worked through her personal issues, maybe she would have simply addressed the prejudicial comment with her site supervisor or a faculty member. Instead Jordan accessed Toni's records, and by doing so she learned of Toni's reported depression, anxiety, and suicidal ideation. If Jordan does not learn about those problems, then her personal reason for contacting Toni via Facebook is removed. Toni then does not have a reason to thank Jordan at the agency, and Jordan presumably would not have given out her phone number and email address to Toni with the instructions that Toni can "contact her [Jordan] at any time for help." Jordan then would not be put in the unenviable position of having to make a decision of what to do with a suicidal agency client who is not Jordan's own personal client.

If Jordan had worked through her personal issues, attitudes, values, and beliefs then the ethical scenario described within could have simply stopped with a prejudicial remark made by a supervisor. Instead, it turned into something bigger than Jordan could have foreseen.

References

- American Counseling Association (2014). *ACA Code of Ethics*. Alexandria, VA: Author.
- Barnett, J. E., & Johnson, W. B. (2010). *Ethics Desk Reference for Counselors*. Alexandria, VA: American Counseling Association.
- Cottone, R. R., & Claus, R. E. (2000). Ethical Decision-Making Models: A Review of the Literature. *Journal Of Counseling & Development, 78*(3), 275. doi:10.1002/j.1556-6676.2000.tb01908.x
- Health Insurance Portability Act of 1996, 45 CFR § 164.502(b) (2013).
- Health Insurance Portability Act of 1996, 45 C.F.R. § 164.512(j) (2013).
- Health Insurance Portability Act of 1996, 45 CFR § 164.514(d) (2013).
- Negretti, M. A., & Wieling, E. (2001). The use of communication technology in private practice: Ethical implications and boundary dilemmas in therapy. *Contemporary Family Therapy, 23*(3), 275-293. doi:10.1023/A:1011178915547
- Sheridan, S. M., Welch, M., & Orme, S. F. (1996). Is consultation effective? A review of outcome research. *Remedial and Special Education, 17*(6), 341-354. doi:10.1177/074193259601700605
- Strein, W., & Hershenson, D. B. (1991). Confidentiality in Nondyadic Counseling Situations. *Journal Of Counseling & Development, 69*(4), 312. doi:10.1002/j.1556-6676.1991.tb01512.x
- Sude, M. E. (2013). Text Messaging and Private Practice: Ethical Challenges and Guidelines for Developing Personal Best Practices. *Journal Of Mental Health Counseling, 35*(3), 211-227.