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Confidentiality and Privileged Communications

Our Responsibilities within the Dual Roles as Church Members and Professionals

Editorial Note: The contents of these presentations represent the views of the author and are not to be construed in any way as an official view of AMCAP or the Church of Jesus Christ of Latter-day Saints.

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Maxine Murdock: Confidentially, the hour is late and we’re all tired and I’m awfully warm up here and I think you are too. Since I am beginning this panel, I would like to look first at a definition of confidentiality and privileged communication. To those of us working professionally in helping areas, confidentiality has to do with the extent to which we must limit ourselves in the use of information given to us by those whom we help. Privileged communication is defined legally, and here I’m referring to the Utah law. The Utah Law states that a psychologist who is licensed cannot, without the consent of his client, be examined in civil or criminal court concerning information he has received while professionally serving his client. So, with these brief definitions let me go on.

Since all of us are professional workers or students going into this area, we do have some ethical obligations. Professionally we have some stringent codes of ethics governing confidentially.

“In the effect of righteousness will be peace, and the result of righteousness, quietness and trust forever.” Isaiah 32:17

For psychologists, our professional code of ethics is specified by the APA as well as by our state Psychological association. For counselors, the APGA has specifications. If we are licensed, then we are also governed by the various state laws. Furthermore, if we are working in an educational setting or an institutional setting, we have guidelines set by these institutions, so that we are working under many different kinds of restrictions as to what we can do. Generally, all of these follow one theme – that is, that the prime obligation we have is the welfare of the client. I think it would be well for us to review some of the guidelines that we have.

I know that as I began my training in psychology these ethical standards were spelled out to me very carefully at the beginning of my graduate work. As I was studying for my comprehensive exams, I went through the entire list of the ethical standards for psychologists. I memorized the case book. As I studied for my Ph.D. exams, I went through them again and then preparing for this talk, as I looked again, some new things came to mind. So I would recommend to all of you that you look at the ethical standards governing you in your work. It is good to review these from time to time.

As a psychologist, let me refer just to the guidelines that we have through the APA. Principle six speaks about confidentiality. This refers to safeguarding the information about an individual that has been obtained by the psychologist in the course of his teaching, his practice, or his investigation. It is a primary obligation of a psychologist to safeguard this information. This information is not communicated to others unless certain very specific conditions are met. I don’t know what these other brethren on the panel are going to discuss, so at this time I won’t go into these specific conditions because I suspect that they will discuss them. I might just make one comment that is made in the APA ethical standards, The psychologist is responsible for informing the client of the limits of the confidentiality. I think this is one area where we might fall down a bit, and I would have
you think about it a little. Check the guidelines for confidentiality that govern you as a professional person, and communicate to your clients the confidentiality or limits of confidentiality under which you operate.

As I have prepared this presentation, I have thought about some areas that have been of great concern to me in my work as a psychologist. These are some of the things that I would like to talk about. I think it is important that we have a thorough understanding concerning confidentiality with the other professionals with whom we work and others on the team. This would extend outward to include secretaries, receptionists, file clerks – all of those who have access to the materials that we obtain. It is important that we have an understanding with the whole team as to where we stand on confidentiality and the limits within which we work, as well as with our clients.

One other area that I would like to remind you of is that the counselor or psychologist is not released from maintaining confidentiality just because others have the same knowledge. I think generally most of us here carefully follow these requirements, but there have been some areas that are of concern to me because of things that I have seen occurring.

As LDS people we are friendly, very gregarious, and as psychologists and others in the helping professions we’re a pretty verbal bunch. I think we have the potential of being the world’s worst gossips. Sometimes we do this under the guise of professionalism, which gives us the license among our colleagues to be completely confidential. Gossip is big business now. Talk shows on TV are tremendously popular, and here we are with all of this information, these juicy morsels that we could really spread around a bit. We wouldn’t think of telling them to people who aren’t professional, but sometimes in our professional associations things become a little gossipy. This has been a great concern of mine, that as we talk about our clients to others, that have developed these feelings. So I think that we have to be particularly careful because if we would talk to a client about another, then obviously he can assume we would talk about him to someone else.

I also think we need to be aware of the physical aspects of the counseling setting. Many of the young people feel really uneasy about coming to talk to a counselor. I think we need to do the best we can to make our offices as private as possible and to have some kind of agreement with the secretary, that appointments are kept as confidential as possible. As for the matter of coming to the office and leaving, I have had some people who are uneasy about going into our waiting room, who would rather wait and come directly to my office. If they feel strongly about it, I try to meet their needs as best I can, and then we deal with this issue in counseling.

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“Belief in the basic dignity and worth of all individual human beings requires that we prize that sacred trust that has been given us when we are invited into their private lives.”
of the confidentiality limits. Talk to secretaries and staff members about confidentiality. Be professional in discussing cases with colleagues, and deal with your own feelings if you are getting your "kicks" from clients in a voyeuristic manner. Then as a general guideline I would suggest to you: when in doubt, keep quiet. Except in the most extreme circumstances. Remember that loyalty to the client comes first.

Ted Packard: I do my best thinking in the shower in the morning and I have spent a significant amount of time the last two weeks in the shower thinking about this topic and despite all that thought, I have not come up with a lengthy discourse or a list of things to say. I am going to try to tell you as clearly as I can why I think that has been the case.

In looking at the title of the panel it seems to me that there are two ways to approach it. One was to look at the panel as being basically focused on the issues of confidentiality and privileged communication. The other approach was to be a little bit interpretive. You can read into the panel discussion the possibility that there may be a conflict at times for the professional person who is also a member of the LDS Church in terms of his or her roles in these two areas. In my thinking I centered upon two or three points. One, the ethical codes are pretty explicit and specific and they cover a lot of ground. They don't cover any of the grey areas which are usually included in the cases one ends up being troubled about, they are relatively explicit though. The basic conclusion that I came to was that for me there was not a conflict and that I was partially limited to my own experience in that I had not been in situations where there were conflicts. I concluded that if I was working with somebody who shared information with me and it was the sort of information, for example, that would get him into difficulty in terms of his status within the Church, then I would not feel obligated to share that with other people in the Church. I would view that as being unethical behavior on my part. The only situation that I could come up with that would be a difficult one would be one in which the counselor was a professional person and also a bishop. If someone came in for counseling and wanted to have two kinds of relationships with him, one as a bishop and one as a professional person, I would presume that that could become rather a sticky situation. But the answer seems to be clear, even though implementing the answer may be rather difficult. It seems that wisdom dictates that the counselor should keep those two roles very separate, being very-clear and honest with the potential client or parishioner that comes in, in terms of trying to define what that situation is.

That is essentially the sum of the substance of my thinking over these two hours spent showering over the last two weeks. I really don't think there is a conflict. It seems that as professional people we have obligations and those obligations do not change based on the fact that we also affiliate with a particular religious philosophy and outlook.

Elvin Tanner: Wayne said earlier as he was addressing us that sometimes, I think he said often, when it comes to some of the issues, we don't know where we are individually. I want to make it perfectly clear when it comes to confidentiality that I do know where I am on that and I want to make it clear to the rest of you that I can keep a secret. It is only the ones that I tell that you need to worry about.

As I considered the title of the panel, I thought of it not so much as the professional standard of ethics, because I think those are spelled out, and I didn't see a conflict for myself because I think that the same standard of ethics would apply. However, I believe there are some different kinds of problems or issues that do confront us in the dual role as members of the church and as a professional person. I address this to the point that very often we are receiving referrals from within the church from bishops, stake presidents, etc. That is the approach that I have taken, looking at it as a somewhat different kind of role where our relationship with the referral source may be quite different. For example, a bishop may find someone in real conflict and perhaps that conflict does involve some moral issue. The bishop is still concerned and he is still involved. The question then has to be raised how much has to be shared. I will try to, as I move along, give you some idea how I personally feel about that.

"A confession to us can never, in any sense of the word, take the place of confession to proper priesthood authority."

Basic to my philosophy of confidentiality is the idea that when we're invited into someone's private life that is a sacred trust, and we get that generally, but not always, by invitation. When we have received that invitation, it seems to me that it carries with it some obligations of being a good guest. In other words we have a certain respect for that person and that inner house that he shares with us. Belief in the basic dignity and worth of all individual human beings requires that we prize that sacred trust that has been given us when we are invited into their private lives. If we do not try to protect that sacred trust, then there is a good possibility that we will not be invited
back. Worse than that, we will probably not be invited into other people’s private lives who may need it, simply because, as has been indicated, the word gets around that you’re not trustworthy. Let me share just quickly just how that can happen.

On one occasion in teaching a class, I gave a case presentation and I disguised all of the materials very neatly. I thought that I had done an excellent job in disguising the material so that it could not be discovered. I did so well that I was not even talking about a student that I had seen on campus. The fact of the matter was that I was describing my sister-in-law. Well, one of the girls in the class went home to her roommate and, of course, they had lived together for some time. She recognized in my description her roommate. She knew her roommate had been in to see me and she said, “Hey, you know Brother Tanner told us all about you in class today.” Well, it took a while to convince her that I was not talking about her, which I was not! and it kind of startled me when I found out.

President Kimball, in talking with the seminary and institute teachers, indicated, “The Gospel is a ‘can’ program, not a ‘can’t’ one. Gospel living is the way to perfection.” We hear the scripture ringing, “Physician heal thyself.” We know that every man must cure himself, but at times he needs help and encouragement. I think President Kimball was alluding to us as professional people, but he went on to say that disciplinary action or court action, when very personal moral infractions are confessed to the counselor, or in this case to the teacher, is to be held there and he cannot take disciplinary action because it is not his right. That’s the kind of situation that we find ourselves in as counselors, particularly within the realm of counseling people who have been referred by the bishop or stake president.

Very often there are moral infractions and they tell us about them. A confession to us can never, in any sense of the word, take the place of confession to proper priesthood authority. Therefore, I would see then my responsibility, as part of the counseling that I would do, not to go to the bishop and say, “Hey, did you know this?” I would probably encourage them to go of their own free will and talk with the proper priesthood authority.

The other side of that coin, however, is where the bishop (and I have had this happen and I’m sure many of you have also) will come to you and say, “I sent so and so over and I’d like to know if this is really going on. I have heard rumors that it is. Is it?” What should you tell him? Because of this sacred trust and because of my orientation in getting them to the proper priesthood authority, I just simply would have to say, “Bishop, if I am going to be of any help to this person, I cannot talk to you about those kinds of things.” I don’t think there would be a violent negative reaction to that. Also, I would let the bishop know that if there were things that needed to be confessed it was my orientation to encourage my client to talk with him, but that I would not do it for my client. The important idea is that every soul is free to choose his life and what he’ll be, and unless it is something that he has confessed, it is going to be of very little value, and I would see greater value in helping the client to go to his priesthood leaders on his own accord.

I have talked with a number of people concerning this, including my own stake president on the BYU campus. I asked him what would he expect if he referred a student to me for counseling? What would he expect from me in return in terms of information? I was very pleased by his response. He said, “When I
have turned it over to you, that’s where I leave, and I
would trust that you would help him to do what is
right, but I’m not going to pry or interfere with the
process.”

There is one related issue that I would like to
touch on before I quit, because it has always been
OKer than some of these other kinds of priesthood-
related situations in which you get the referral. What
about the case where a wife is coming in for coun-
seling, and within the Church structure the husband
is the first-order priesthood authority in her life, if he
is living properly. The husband then comes to you and
says, “Hey, I want to know what’s going on. Will
you . . .?” I’ve had to say the same sort of thing. But
there’s a different kind of power or lever that he
wields here. On a couple of occasions, because the
husband most often is paying my fee, if he doesn’t
like what I tell him or don’t tell him, he may cut off
payment of fees. I have had a couple of husbands say,
“I don’t like that. I don’t like my wife talking to you
and you not telling me what she says, and so she is
not coming back to see you.” I still feel that I should
protect that privileged communication from him. If
she wants to tell, then I think she should. In most
cases because of the damage that is done by some of
the secrets that are held, I would encourage her to do
so. But primarily it boils down to the same principle,
getting them to go to the right person to make it right.

I had a fairly recent situation, within the last two
years, in marital counseling where both the husband
and wife had been involved in some serious moral
infractions. Their marriage was at the point of breaking
up. He was completing a graduate program and she
was working to help him finish, but as soon as he got
through with the program, she was going to be on her way.

Most of the conflicts centered around these moral
issues. They were encouraged to go to the proper
priesthood authority. They did. The branch in one
case took action against one of them (not against
them, but for them, I guess is the proper way to put
it) and the stake for the other. When the action had
been taken and the air had been cleared through con-
fession, and the matter had been dealt with properly,
their marital conflicts diminished to the point where
they could handle them on their own. The source of
most of their problems was those things that had been
kept secret. This convinced me that we probably should
make more referrals in those kinds of cases. We can still
work with them in the other areas.

President Kimball has mentioned several times the
work that is done within the Church, particularly
with sex offenders. I just wish to quote one line from
a statement that he made talking about these people.
He said, “The person is permitted to tell his own
story in his own way, and then he is helped in a very
confidential way.”

That gives me a great deal of confidence that
they would support us as professional people in
dealing with our brothers and sisters in a very con-

Grant Hyer: I have a large clinical practice and see
a lot of people every week, and all of us may be in-
volved in that sort of thing. There comes a time in
your life when you can use a little therapy. That’s
why I’m here today. I want a little therapy and help
from you.

First of all, I see that tape recorder over there
turning, and that just sends chills up and down my
spine because I’m going to talk about confidentiality
and privileged communication. Now, heaven knows
what they are going to do with that stuff if I tell you
what’s in my heart and what is bothering me. This
reminds me of the time when my first client came in
with his tape recorder in order to record the session
so he could take it home and listen to it. I thought
about that and I said, “This confidentiality is a two-
way street.” He trusted me to keep his information
confidential, so I’m going to trust him. So, I per-
mitted all my clients to bring their tape recorders,
and they do it regularly to record the sessions. Then
they take them home. What they do with them, I
don’t know. They may play them for family and
friends and have a lot of fun.

I do know that it has been my privilege to see a
number of clients who have been seen by other
therapists in the community. If any of you
have had this experience, you certainly can learn
a lot about the other therapist because your
clients will tell you everything there is to know about them, their attitudes, their feelings, their biases and their prejudices. I'm sure if any of you ever see any of my clients, you will get to know me pretty well because I'm sure they are going to tell you something about me.

Then, I have another feeling that I have got to work out of my system - that has to do with this whole AMCAP program and what we are trying to do with it. The girls this morning made a nice presentation and there may have been some discussion. Brother Cline made his sort of rebuttal and that's very interesting. It reminds me of a time when I was about 19 years of age.

"This confidentiality is a two way street."

At that time I began to criticize the General Authorities and some of the things they were doing. My father, being concerned about my soul, said to me, "Now, son if you start to criticize the General Authorities, that's the first step on the road to apostasy." I thought about that. "Yeh, that's true."

Yet I was still left with my feelings. I was walking around with my feelings, and I was sort of between a rock and a hard place - what to do about this kind of conflict in terms of what I felt and thought; what I ought to do and should do. I really didn't have an answer for that for some time.

But I guess the Lord was good to me because I was reading in Priesthood and Church Government by John Widstoe and as I was reading (I think it is on page 189, if I remember) I found something that goes like this. "It is the duty of every elder in the church (and I had just been ordained an elder, by the way) to find out for himself if the doctrines of the Church are true."

Those words jumped out at me just like I am sure Joseph Smith's experience with the Bible jumped out at him. That made sense to me. Now, that gives me privilege to question, doesn't it. I don't have any argument. I can't question the General Authorities. That's going to lead me onto the road to apostasy. But apparently I can question the doctrines of the Church and find out for myself if they are true.

So in AMCAP this is what we are going to do. We're between a rock and a hard place. We've got to structure ourselves so that we come out smelling like a rose, as far as the General Authorities are concerned, but I'll bet a lot of you have a lot of feelings that you need to work out relative to some of these things and how they can be applied in our lives, and more especially how we can help the people that we see deal with these problems, especially related to confidentiality and communication. Let me cite a couple of examples to illustrate what I am talking about.

We as professionals espouse: (1) that we have confidentiality. We say that. I guess under the strictest sense of the rule, if you tell anyone else it has lost its confidentiality because you know what is going to happen to it. We have a law for those people who are licensed, The Law of Privileged Communication. In the Church we have the rule that information is supposed to be confidential. It is supposed to be confidential, but there is no such rule as the law of privileged communication in the Church.

Many people have gone to their bishops for counseling to discuss certain issues and to clarify certain things in their lives, and assumed that the discussion was going to be kept confidential, and have forgotten they weren't talking to their counselor. They discovered that they were talking to the judge. So, the next day they have found themselves in High Council court. In a sense then we teach our people a double message. We say, "Okay, you go and talk to your bishop and he will deal with it in confidence, but, ultimately you can end up in court and your counselor will be your chief accuser." Now that's a problem when that happens to you as a person, because counselors assume these sort of things. Maybe you can help me resolve some of these dilemmas.

I guess ultimately, as far as the Lord is concerned, there is no such thing as confidentiality at all. Let me read from the first section of the Doctrine and Covenants verse 3: "And the rebellious shall be pierced with much sorrow for their iniquity shall be spoken upon the housetops and their secret acts shall be revealed." So, I guess as far as the gospel is concerned, there is no such thing as secrets, confidences.

Therefore, if we are going to live in light, then we had better prepare ourselves to live in light because that's the way it is going to be. If you think you are going to live with your little secrets, you're mistaken because when you get to that day of judgment, the big screen will be playing. You will see it all, according to the Doctrine and Covenants.

In terms of the panel and the conflicts in the panel, I don't think there is any conflict between the role of the Church member and the role of the professional. I had a unique experience (Brother Packard related to the problem) when I was younger and I suppose that by doing it again, I'd be a little wiser. I have learned a lot over the last few years. You learn a lot as you get older. It's amazing how many things you didn't know when you were young. Let me cite a couple of examples.

I was bishop at one time and also, in private practice, a marriage counselor. I was living in a community where there were no other LDS counselors and the
people came to me who were also members of my ward for counsel. I had the unique experience of telling them, "Okay, brother or sister, if you want to come into my office, I'll see you for nothing and I'll give you the best counsel I can as your bishop. The scriptures will be on the table and we'll deal with the issues as they come about. However, if you don't want to go that route, I'll see you in my office and you can pay me 'x' number of dollars -- I'll never mention the scriptures or religion unless you bring it up. Then we'll discuss it as it seems appropriate from a professional point of view."

It was interesting to me. I did a survey. About half of the people who came to me wanted to see me as their bishop and about half of the people who came to me wanted to see me as their professional counselor. It just so happened that no critical issues came up that would really have put me in a bind. I think that if they had told me some things as a counselor that they wanted to keep secret, they would have been kept a secret because of the law of privileged communication. They would have to come into my bishop's office and reconfess the whole thing over again, if they wanted to deal with it as a church issue. So, I think we have real problems in communications with confidentiality and privileged communications, especially as it relates to our members.

"I guess as far as the gospel is concerned, there is no such thing as secrets, confidences."

Let me cite an example of some of the dilemmas we have as counselors, at least that I am struggling with. There was a case in which both husband and wife had been involved in strong moral issues. They came to grips with these problems with the help of a counseling situation and decided that they needed to repent and wanted to repent. They decided that they wanted to postpone their punishment, because they had four children. They knew that their children would be subjected to a good number of problems if they, the parents, were excommunicated from the Church. Considering the kinds of social pressures that are prevalent in wards and stakes where this happens, they decided that they were going to repent -- as far as they were concerned -- but they set a target date of 12 years into the future to talk to their bishop, because by that time their children would have left home. The children would be married, or gone to college. The parents felt that it would be appropriate for them to confess and take their punishment. They were willing to make that kind of a sacrifice. They would go to church, do their things. They would avoid asking for a temple recommend or get into any kinds of problems in that score. But that's the kind of life they were going to live.

Now being an LDS counselor what would you do? Would you let them just do that? Would you counsel them further? What kinds of options would you give them? What kinds of alternatives might you want to discuss with them? Those are some kinds of issues that we might want to discuss as we get into our groups, after the tape recorder is turned off. I'm not going to commit myself much further than that with that tape recorder going.

One other issue, is the issue of abortion. I have felt very comfortable for years in dealing with people who had the problem of abortion. They came to my office. I discussed the pros and cons, the alternatives, consequences, etc., etc., and then just recently we had the opportunity to get some referrals from an agency that deals with these kinds of problems. The thought came to me because now when I go to my bishop and ask for a temple recommend and there's a question, "Have you participated, talked to, engaged, or discussed anything relative to anybody about abortion?" Now, I'm not quoting that correctly because I don't have the handbook before me, but if any of you have been there lately, you know what the question is. After thinking about it, I asked myself, "Suppose the client comes into me and we discuss the options of abortion and what it means to her in her life, etc., and then she has the abortion and then reports to the bishop, 'Well, I was in counsel with Brother so-and-so for a year.'"

"Ah, Brother so-and-so counseled you, huh? Well, maybe we had better get him into court and see where he's at."

You know how often clients misinterpret what you might be telling them as you try to help them clarify what is best for them. They may decide that what you are really telling them is that it is okay to get an abortion. That is not a sticky issue with me yet, but I can visualize it becoming so as the schools begin to turn and as President Eyring talks about the separation gap and the norms and conformities that we are talking about become important. So I think it is very important that we as counselors are clear on how we handle and encourage people to share confidences, not only with us but also with the Church.