

Confidentiality in Coaching

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EDITOR'S NOTE

Client confidentiality is an aspect of your practice that may be fraught with peril if you lack behavioral guidelines. In this article, the authors focus on confidentiality in the business coaching relationship. We believe their case studies and recommendations also have relevance for consulting per se, and we encourage you to read them with your own experiences in mind.

In counseling and advisory relationships, the concept of confidentiality conveys a sense of security that a conversation will be private and operate within defined boundaries. As such, it is an important feature in these relationships and must be consistently and consciously understood and maintained. The consequences of imperfect (or nonexistent) confidentiality may be serious. We explore these concerns in this article and offer six practical suggestions for professional business coaches—for their clients' benefit and for their own.

For the purposes of this paper, "confidentiality" is defined as:

The right of an individual not to have those communications imparted in confidence revealed to third parties.¹

And "coaching" is defined as:

The relationship which occurs when an individual (usually external to the client organization) contracts initially with that organization, and ultimately with an individual in that organization, to ask questions and explore business and personal possibilities in order to help that individual (the coach's client) learn and grow, so the client can significantly improve his/her ability to achieve goals he/she has set for himself/herself.²

The significance of the distinction between "regulated" and "unregulated" professions is central to this article. In regulated professions (such as medicine, law, and psychology), specific activities in the profession itself and the behaviors and conduct of the practicing professional are prescribed and monitored by governmental agencies and voluntary professional organizations. In unregulated professions (such as business coaching), they are not. In this sense, any decision that a business coach makes about the private nature of coaching and about how that confidentiality will be articulated, may be more problematic because of the lack of universal legal requirements and standards.

CASE 1 Regulated Profession

Using medicine, and specifically psychiatry, to illustrate confidentiality issues such as the

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*Can you
keep a
secret?*

breach of confidentiality and duty-to-warn requirements in a regulated profession, the following excerpts from a report by this article's coauthor (DPG) describe a difficult return-to-work/fitness-for-duty (RTW/FFD) employment psychiatric evaluation.

Reasons for Referral

Ms. B, a 32-year-old married female, employed as a secretary, was referred to me by the XYZ Corporation for a general psychiatric evaluation. The evaluation was especially intended to address her potential for dangerousness and/or violent behavior. The company wanted to ensure against any potential threat to any senior leader (and his or her family) within the company. This request was prompted by Ms. B's having sent a number of letters, cards, and postcards over the previous two-month period with strange and bizarre symbolism and messages to XYZ executives with whom she had little business contact within the company.

These written communications followed a several-month period during which Ms. B, a shy and reticent person for all of the ten years for which she had been employed by XYZ, began to withdraw even more and perform poorly at work, often working in a confused and disorganized way. This withdrawal, poor performance, and associated tension and anxiety reached the point that she began to lose considerable time from work. She had been advised by her family physician to take time off from work for rest. At the time of my interview/examination she had been off work "sick" for at least a month.

Shortly after Ms. B was involved in this pattern of poor work performance and withdrawal, she began sending the inappropriate mail to several XYZ executives. It was at that point and primarily for that reason that this psychiatric evaluation was sought.

Course of Interview

Ms. B did not arrive for the first appointment, because she "got lost." Another appointment was set. Because of the extreme nature of the case, I had arranged ahead of time for immediate admission, if necessary, to a medical center for Ms. B on the day of the evaluation. I also arranged with a local laboratory for immediate

blood and urine toxicology testing, if indicated.

Ms. B finally came to her first interview with her father who was 6'8" tall, weighed about 300 pounds, and informed me that he had served as a Ranger in Vietnam. The first segment of the interview was held with Ms. B and her father, who insisted on being present to tell "what's really going on with his daughter." I advised both Ms. B and her father that because this evaluation was a consultation to her employer, there would be no confidentiality in the traditional doctor-patient context. I provided a "Notice of Nonconfidentiality," which Ms. B read aloud,

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and we discussed it. I responded to her and her father's questions, signed the Notice myself (signifying their consent to the interview without confidentiality), and then proceeded with the interview.

The second segment of the interview/examination on the same day was the actual clinical interview of Ms. B, which gave a picture of serious active psychosis. During the third segment of the interview/examination, I raised the subject of psychiatric hospitalization to Ms. B, to which she reacted very dramatically. She quickly cried out "No!" and ran out of my office into her father's arms. I attempted to explain the gravity of Ms. B's situation to her father—as I had to Ms. B herself—to which he yelled out, "I'm taking her out of here. They promised this wouldn't happen. If you or anybody else tries to stop us, I'll sue you!" I asked him if he understood that he was leaving with his daughter against medical advice, to which he replied "Yeah, and don't try to stop me!" They then left.

During the interview, Ms. B said that she intended to poison her husband. Based on this revelation, I first called and attempted to speak with her husband about Ms. B's expressed intentions. With no answer at the number I called, I called hospital security and the local police department for the area where Ms. B lived with her husband. It was my professional

opinion that she was actively psychotic, dangerous, and in need of immediate psychiatric hospitalization and treatment, on an involuntary basis if necessary. I also believed that all relevant parties should be warned of her diminished capacity and specific threats. As part of my warning, I requested that they take her to the nearest emergency room as soon as possible for evaluation and referral for psychiatric admission. Next, I called my contact at XYZ Corporation to immediately follow up with a verbal report and to advise him to continue the precautions the XYZ Corporation had been taking to protect the executives who had received cards or letters from Ms. B. I explained that her behavior was so psychotic, bizarre, and potentially unpredictable that she might well prove potentially dangerous to them.

Over the several weeks following this evaluation, I stayed in contact with XYZ Corporation. They attempted to make telephone contact with Ms. B and with her father, to no avail. Ms. B stayed away from work and kept to herself, and there had been no further action toward psychiatric hospitalization and treatment for her.

Appraisal

Immediate psychiatric hospitalization and treatment were indicated for Ms. B. It was my belief that with prompt and aggressive treatment her prognosis could be good. I made telephone calls to several persons and agencies in connection with this evaluation, which included my recommendations for immediate medical-psychiatric reevaluation. As is customary, I forwarded a copy of the psychiatric evaluation report to my contact at XYZ Corporation and have been available to him for other services and support that he may require of me in connection with Ms. B.

Discussion

Case 1 illustrates the following points applicable to professional-patient confidentiality in a regulated profession:

- Confidentiality in this consultative relationship was *not* assumed, as presented by law

and regulations applicable to the practice of medicine.

- If the evaluating/treating clinician's opinion is that the evaluatee/patient/client is or may be dangerous, that clinician has a *duty to warn* the intended *victim* (if one is specified), or *community* (if one is not). Laws governing this practice vary from state to state.³

- A difficult but clear situation like this requires careful documentation in *writing* (progress notes).

- The "no-confidentiality" parameters of this evaluation were made explicit at the beginning of the interview. This practice should be followed in all evaluation and counseling relationships.

CASE 2

Unregulated Profession

In contrast to regulated professions, guidelines for confidentiality in unregulated professions are less explicit. The following case example, drawn from the observations (but not personal experience) of this article's coauthor (WKH), occurred in the context of a business coaching assignment. The presumed confidentiality between a business coach and a client was challenged and broken, with serious consequences.

The Situation

The business is in a highly competitive global market, well positioned to remain successful as long as it continues to anticipate and respond to changing market needs. The CEO was the original founder, who almost singularly created the platform for the enormous success enjoyed by the company.

A CFO was hired away from a medium-size competitor, with a mandate to build an effective organization from the existing entrepreneurial group. He was specifically promised that he would be the primary candidate for succession after the CEO-founder decided to step down, and specific revenue targets and growth measures were set and—at the CFO's insistence—put in writing.

Increasingly, conflict grew between the CEO and CFO, sometimes stimulated by sharp

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differences of opinion in decision making, but mainly as the result of a distinct contrast in personal operating style. Historically, the CEO had been extremely independent and generally unchallenged in his business operations. While he possessed good business instincts, he tended to approach problems, opportunities, and decisions in a rather laissez-faire style, and accordingly, his subordinates were allowed considerable latitude in their work.

In contrast, the CFO had a very direct operating style and overtly demanded compliance from both his direct reports and peers. He believed he was right, and he regarded managers who disagreed with him as weak leaders. When the CFO had originally agreed to join the CEO's business and improve its efficiencies, an attractive incentive plan was put in place as a highly leveraged motivator. This was by far the greatest reward opportunity the CFO had seen in his entire career, and it was clear to him that successful execution over a five-year period would make him financially set for life.

From almost the beginning of their relationship, the two officers came into conflict with each other, while the company's growth in revenue and profitability remained on track and achieved some very notable successes. The CFO periodically became angry at the CEO in public settings concerning the CEO's handling of relatively minor matters. In part, the CFO was jealous of the CEO's widespread popularity and felt that he "bought" that praise by not being tough enough in his personal operating style. While the CEO and CFO attempted on a few occasions to discuss these differences in private, tensions between the two only increased.

Coaching Sessions

Finally, the CEO became so concerned about his CFO "situation," as he characterized it, that he recruited an executive coach who had considerable experience working with senior executives in conflict. The coach himself was a retired comptroller with a background in the same industry. He had perceived himself as a successful manager and motivator of employees, and to further his interests after his retirement, he had taken several weekend seminars

in executive coaching. However, he was not formally trained nor did he have any experience in the behavioral science disciplines.

The coach's primary work, as initiated by the CEO, was to focus on the CFO. He asked to consult with the CEO as part of this effort, and realizing he was part of the problem, the CEO made himself available in order to help rectify an increasingly disruptive situation.

It became evident that the CFO wanted to become actively engaged in the coaching process by openly sharing his concerns. He repeatedly told the coach a variety of tales of woe; for example, how he was chosen by the CEO, how he ultimately knew he was right regarding business decisions in the company, and how the CEO continued to make bad decisions about the business.

After two months of slow progress in the executive coaching process, the business experienced several problems. The CFO became increasingly furious and lashed out at the CEO in both public and private settings. He eagerly expressed his feelings of anger and concern to the coach.

In one particular session, the CFO told the coach that he "could kill the CEO," because the CEO was ruining everyone's opportunity to achieve enormous success (and huge financial rewards). The coach interpreted the CFO's comment figuratively as an expression of his extreme frustration and anger toward the CEO. He did not take the comment as an *actual threat* to do bodily harm to the CEO. In a supportive manner, the coach attempted to help the CFO understand his behavior in the company, and how that behavior was increasingly impacting his work responsibilities and judgment in a negative way. Other employees also had noticed the increased intensity of the CFO's agitation, as expressed in a variety of critical references he made about the company and the CEO, in both public and private forums.

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In his next executive coaching session, the CFO described in great detail his “perfect opportunity to run over the CEO with his car in the company parking lot that morning.” He also commented that if he had “done that it would get the CEO out of the way once and for all. Then I could take over the company and save it from the ruin that the CEO was inflicting on everyone.” The CFO’s description of the accident was graphic, and he suggested that he would be pleased if he actually had run over the CEO. He also commented that “I should look for more opportunities like this, and really act the next time one comes up.”

At this point the coach felt a strong need to talk to the CEO. He told the CFO he was going to discuss the progress of the executive coaching assignment to date with the CEO and, in particular, that he was going to express his concerns.

Lawsuit

The CEO asked for advice about what to do in that situation, including what other information the coach could give him about the CFO’s personality and temperament, based on the coach’s sessions with the CFO. The coach complied with the CEO’s request and offered a full description.

Ultimately, the CEO fired the CFO. The CFO then brought a lawsuit against the CEO and the company for that action. He also named the executive coach as a party in this lawsuit. The former CFO asserted that if the coach had not violated his confidence, the CEO would never have been driven to take the action of firing the CFO.

The lawsuit went badly for the coach, although the CEO and his company settled with the former CFO for an undisclosed amount. The coach was seriously impacted by the judgment against him and, unfortunately, was not covered in any way by malpractice insurance. Since the lawsuit was settled in his favor, the former CFO invested significant effort in doing whatever he could to undermine the coach’s reputation. In a private moment, the CEO mused to himself that “the moral to the story is that it’s okay to ask questions, but giving answers can have serious consequences.”

Discussion

Case 2 illustrates the following points applicable to coach-client confidentiality in an *unregulated* profession:

- Confidentiality in this consultative relationship was never made clear, by either the coach or the client, at any time during the coaching relationship.

Neither privilege nor confidentiality could have been assumed by either coach or client, since the coach was not a member of a regulated profession with explicit guidelines in this area.

- During the lawsuit brought by the terminated CFO against his former employer and the coach, the court accepted the concept that the client could “reasonably expect” a confidential relationship with the coach, even though no explicit guidelines existed or were devised regarding confidentiality and privilege in this relationship.

- In difficult and unclear situations, careful documentation in *writing* (progress notes) is essential as a basis for a breach in confidentiality, regardless of whether or not that breach is actually justified and endorsed (by the court, for example).

- The coach’s potentially divided loyalty to the CEO and his company (the client that paid his fees) and the CFO (his coaching client) was never explicitly addressed in this particular coaching relationship. That issue was also not structured or informed by written professional guidelines such as those found in regulated professions.

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Conclusions and Recommendations

Both authors of this paper, from different professional backgrounds (psychiatry and

psychology), engage in counseling in their professional work and are governed (Dr. Greenfield) and not governed (Mr. Hengen), respectively, in that work by prescribed rules and regulations. The presence or absence of regulation may provide both security and concern for the two practitioners. In the two cases given, the requirements for confidentiality were clear and vague, respectively, and raised vexing concerns about proper professional behavior. To elucidate this potentially confusing, difficult, and unresolved issue, we have:

- Defined “confidentiality” in the context of business coaching
- Pointed out the distinctions between regulated and unregulated professions, in terms of confidentiality and privilege, recognizing that as a heterogeneous group of professionals, business coaches may fall into either category
- Emphasized the need for care and planning by business coaches in addressing confidentiality and privilege issues in their work.

With regard to the third point, we provide the following specific recommendations:

1. If a coach is a member of a regulated profession (such as clinical psychology), use the confidentiality guidelines of that profession in coaching work.
2. Decide on confidentiality guidelines in advance, advise new clients of these guidelines, and use these guidelines consistently.
3. Maintain progress notes of business counseling sessions.

4. If confidentiality is to be waived by the client, use a consent instrument specifically for that purpose.
5. Carry malpractice (professional liability) insurance, either generic for coaching or specific to the coach’s underlying profession.
6. Carry enough insurance coverage; coaches may consult in multimillion dollar decision-making areas, with enormous potential liability exposure.

Awareness of the confidentiality and privilege issues discussed in this article can help the professional business coach to both avert lurking problems and deal with issues that do arise. Although the role of confidentiality and privilege is not a developed area of concern in professional business coaching, it is an area rife with potential conflict, problems, and consequences for both coach and client. The coaching profession can expect more discussion and debate in this potentially volatile area in the years to come. ■

For a special feature on “Confidentiality in Consulting,” we invite readers to share their experiences and counsel relating to client confidentiality. Please send your submissions to Editor@C2M.com.

Notes

1. T. G. Gutheil and P. S. Applebaum, *Clinical Handbook of Psychiatry and the Law*, 3rd Edition (New York: McGraw-Hill, 2000, p. 4).
2. Private communication, W. K. Hengen (Feb. 1, 2002).
3. V. Merton, “Confidentiality and the ‘Dangerous Patient’: Implications of Tarasoff for Psychiatrists and Lawyers” (*Emory Law Journal*, 31, 1982, p. 263).

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