Guidelines Regarding Confidentiality for Social Work Students
In the Clinical Law Office

The issue of client confidentiality for social workers or social work students in a legal setting is essentially the same as for a social worker employed in any public or private community agency. The only complicating factor is the conflict which arises because social workers in a legal setting are acting as an agent of the attorney (or student attorney) and are thus covered under attorney-client privilege, while at the same time there are legal and ethical responsibilities which require social workers to disclose certain information.

The attorney-client privilege is set forth in the Maryland Rules of Professional Conduct which are included in Volume 2 of the Maryland Rules, in the Appendix.

Rule 1.6 is the rule and it states:

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

1) to prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interests or property of another;

2) to rectify the consequences of a client’s criminal or fraudulent act in the furtherance of which the lawyer’s services were used.

The comment to this rule makes it clear that the lawyer’s duty under paragraph (b) is discretionary and that failure to breach the confidence and tell the party in harm of injury or to take steps to stop it is not actionable against the attorney.

The discretionary nature of the lawyer’s obligation contrasts to the mandatory duty of the social worker to report in some situations. Notwithstanding any other provision of Maryland law, social workers are required to report information which they learn through their contact with clients in at least three areas: 1) duty to warn when a client makes a threat to harm self or others, 2) abuse or neglect of a child, and 3) abuse or exploitation of a vulnerable adult.

Duty to Warn

Social workers have a “duty to warn” when they learn that a client has an imminent plan to harm an individual. Section 5-316 of the Maryland Annotated Code, Courts and Judicial Proceedings Article, addresses mental health care workers responsibility when a client indicates “by speech, conduct, or in writing of the patient’s intention to inflict imminent physical injury upon a specified victim or group of victims.” (Section 5-316.(b).
The mental health provider is required to either: i) seek civil commitment of the patient, ii) formulate a diagnostic impression and establish and undertake a documented treatment plan calculated to eliminate the possibility that the patient will carry out the threat; or iii) inform the appropriate law enforcement agency and, if feasible, the specified victim or victims of: 1. The nature of the threat; 2. The identity of the patient making the threat; and 3. The identity of the specified victim or victims. (Section 5-316.(2)(i)and(iii)

In addition to the student’s individual responsibility, the agency also has a responsibility. Therefore, it is essential that as soon as the student learns of a client’s intention to harm themselves or another individual they immediately report this to the social work supervisor. The case should be discussed between all parties involved (student social worker, student attorney, social work supervisor and supervising attorney), to develop a plan which is in the client’s best interest and in keeping with all parties’ professional and ethical responsibilities.

**Reporting of Child Abuse and Neglect**

Section 5-704 of MD’s Family Law article requires social workers, acting in a professional capacity, who have reason to believe that a child has been subject to abuse or neglect make a report to the local Department of Social Services. (MD Annotated Code, Family Law Article, Title 5, Subtitle 7, Section 5-704). This article has been defined very broadly to include any child about whom we are aware in our professional capacity that we believe is or has been subject to abuse or neglect. This also includes adults abused as children, whether there is current risk to a child or not. (Opinions of the Attorney General, 1993, Opinion No. 93-049, December, 1993.)

There is one narrow exception to a social worker’s requirement to report which may impact on social work students in the Clinical law Office. In an Attorney General’s Opinion (Opinions of the Attorney General), 1990, Opinion No. 90-007) dated 2/8/90, Md. Attorney General J. Joseph Curran, Jr. concluded that the only exception to the requirement of a mental health care worker to report child abuse or neglect is if they learn of the abuse or neglect from a client, referred by an attorney as part of the attorney’s trial preparation, after the initiation of criminal proceeding against the client. In this case, the social worker is covered by the attorney client privilege. This privilege is very narrowly defined in that it is only applicable if the social worker is working with a client who has already been charged and is referred by the attorney to assist in preparation of the client’s defense (i.e., perhaps to identify appropriate treatment alternatives).

**Abuse or Exploitation of a Vulnerable Adult**

The reporting requirements regarding vulnerable adults are somewhat more limited than they are for children. COMAR 07.06.14.04A requires that a “human service worker who contacts, examines, attends or treats an alleged vulnerable adult and who has reason to believe that the adult has been subject to abuse, neglect, self-neglect or exploitation shall notify the local department of social services.” (COMAR 07.06.14.04A) As in all cases when the student social worker is faced with the possibility of violating client confidentiality, the social work supervisor must be notified immediately. S/he will review the information with the student to determine the
cause for the concern and whether the situation would constitute abuse, neglect or exploitation under the state regulations. Together, with the student attorney and supervising attorney, they will develop a plan which addresses both the best interests of the client, as well as the ethical responsibilities of all parties involved.

Summary

The above are general guidelines regarding social workers’ responsibilities in the area of client confidentiality. The student attorney should consider these and discuss them with their supervising attorney when making a referral for social work services to ensure that a referral for social work services doesn’t ultimately result in a conflict because of the social worker’s responsibility to report in some limited circumstances.

Considering whether to make a report concerning a client is a very complex issue. The worker needs to take into account several factors including: the worker’s professional and ethical responsibilities, the impact the report will have on the client’s relationship with the social worker and the treatment process, and the potential harm to the client or other individuals. For this reason, it is essential that whenever a student learns information from a client that they feel may fall under one of the reporting requirements above that they immediately inform the social work supervisor. In each case where the social work supervisor determines that this information, in fact, must be reported, s/he and the student social worker will meet with the student attorney and supervising attorney involved to discuss this and develop an appropriate plan.
References

75 Opinions of the Attorney General 1990, Opinion No. 90-007 (February 8, 1990)

78 Opinions of the Attorney General 1993, Opinion No. 93-049 (December 3, 1993)

Code of Maryland Regulations (COMAR 07.02.07.04.B) Department of Human Resources – Protective Services for Neglected and Abused Children

Code of Maryland Regulations (COMAR 07.06.14.04.A) Department of Human Resources – Community Services Administration Adult Protective Services

Courts and Judicial Proceedings Article, Section 5-316, Maryland Annotated Code

Courts and Judicial Proceedings Article, Section 9-121, Maryland Annotated Code

Family Law Article, Title 5 – Children. Subtitle 7. Child Abuse and Neglect Section 5-704, Maryland Annotated Code

Family Law Article, Sections 14-101 - 14-404, Annotated Code of Maryland

State vs. Pratt, 284 Md. 516 (1979)
We do not divulge information provided by our clients to any person, other than Clinic Staff members, without your consent, including your immediate family. However, this Contract of Confidentiality will not be deemed to be violated in the following circumstances:

1) You give your permission, in writing, for us to discuss you (or your child) with specified allied professionals outside the Clinical law Office with the goal of assuring coordination of services.

2) If during the course of providing on-going social work services, we have cause to suspect child abuse or neglect or abuse, neglect or exploitation of a vulnerable adult, we are required to report to the appropriate authority.

3) If during the course of providing on-going social work services, we have cause to suspect that an individual poses a clear and immediate danger to himself or to others, we may deem it necessary to report to the appropriate authority.

Please sign below to indicate that you are in agreement with our policy on confidentiality.

_______________________________  ____________________________________
CLIENT SIGNATURE  PARENT OR GUARDIAN (as necessary)

_______________________________  ____________________________
SOCIAL WORKER  DATE