

VICTIM-ADVOCATE CONFIDENTIALITY

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WHAT IS CONFIDENTIALITY??

- ◇ Information that is meant to held in confidence or kept secret
- ◇ Statements that are meant only for the ears of the person addressed

WHY IS CONFIDENTIALITY SO IMPORTANT IN DOMESTIC VIOLENCE CASES?

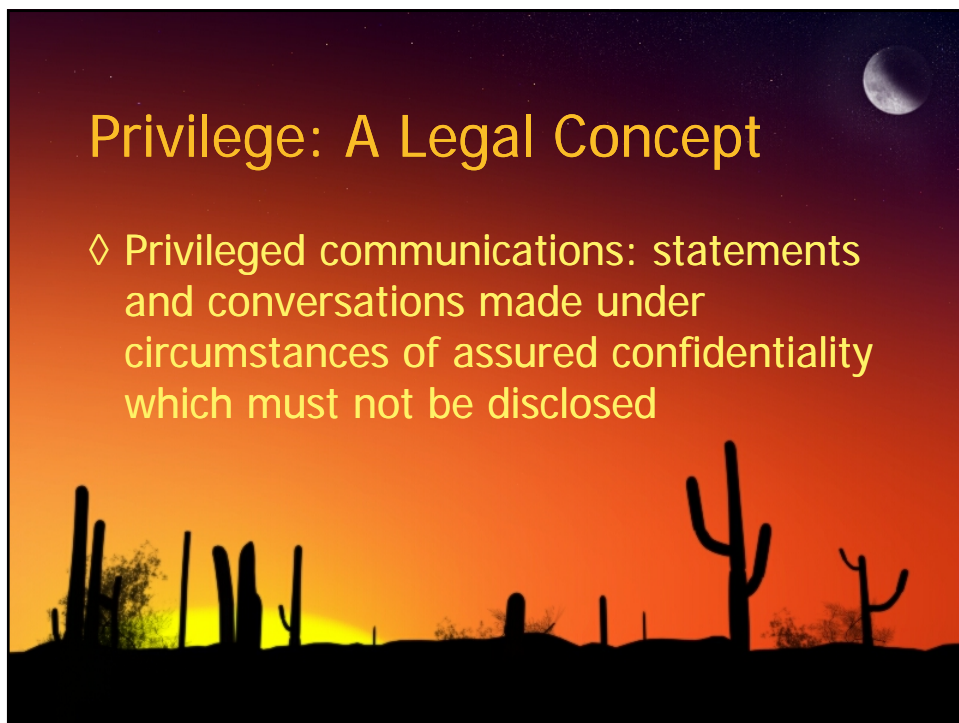
- ◇ Preserve safety strategies that rely on certain information remaining private
- ◇ Provide privacy necessary for women to speak freely and share details essential to safety planning
- ◇ Place control of the information in the woman's hands and demonstrate the advocate's commitment to client autonomy and self-determination

THE BASIC RULE

- ◇ Most domestic violence programs adhere to this basic rule:
A client's information is not shared outside the program unless the client gives the program permission to do so in writing.

Some Statutes/Caselaw Protect Confidential Information

- ◇ Privileged Communications
- ◇ Usually protected by statute or case law in the applicable jurisdiction

The background of this slide is a desert landscape at dusk or dawn. The sky is a gradient of orange and red, with a crescent moon in the upper right corner. The foreground shows the silhouettes of various cacti, including saguaros and cholla, against the bright horizon.

Privilege: A Legal Concept

- ◇ Privileged communications: statements and conversations made under circumstances of assured confidentiality which must not be disclosed

PRIVILEGE: A Legal Concept (cont)

- ◇ Based upon public policy: one should be able to speak freely to certain persons without fear of repercussions

What Statements Are Protected?

- ◇ "Holder" of the privilege is the person speaking that has statutory protection regarding the statement made (Patient in a Doctor/Patient relationship)
- ◇ Only the holder of the privilege may allow the disclosure to a third party



Privilege: The Legal Effect

- ◇ One cannot be forced to testify or reveal such privileged conversations to law enforcement, courts, or others even under threat of contempt
- ◇ May be waived by the holder of the privilege (the person who communicated the confidential information not the person who heard it)



Recognized Privileged Communications

- ◇ Most common:
 - Priest-Penitent
 - Lawyer-Client
 - Psychologist-Patient
 - Doctor-Patient
 - Husband-Wife
- ◇ Licensed Social Worker-Client
- ◇ Domestic Violence Advocate-Victim (but not a victim witness advocate working for the prosecutor or law enforcement)

WAIVING THE PRIVILEGE

- ◇ Expressly: Victim tells advocate "Please tell the prosecutor x,y,z that we discussed."
- ◇ Because of actions of the holder:
 - having a third party present during the communication (in the interview room)
 - putting the statement at issue such as bringing the statement up at trial

PERMISSION TO DISCLOSE

- ◇ Concerns about confidentiality do not arise when the client grants you permission to disclose the information
- ◇ Be certain that you understand what the client is granting you permission to disclose

PERMISSION TO DISCLOSE (cont)

- ◇ It is best to get the client's permission to disclose in a writing that
 - lists what specific information you can disclose
 - says to whom it can be disclosed
 - is signed by the client
 - includes an expiration date
 - provides a notice that the client can rescind her permission at any time if she chooses

Three Levels Of Privilege

- ◇ Absolute
- ◇ Semi-Absolute
- ◇ Qualified

Exceptions to Non-Disclosure

- ◇ If your jurisdiction recognizes an absolute privilege for your profession, these exceptions will not apply to you and you must never reveal the privileged communication
- ◇ If your jurisdiction recognizes a semi-absolute or qualified privilege these exceptions may apply

Exceptions to Non-Disclosure (cont)

- ◇ CHILD ABUSE REPORTING
- ◇ SUBPOENAS or other court orders to disclose

Program Protocol

- ◇ Programs with professionals who are mandatory reporters or discretionary reporters should have written protocols to guide staff in deciding whether or not to report
- ◇ Typically this decision should be made in consultation with a supervisor

Your Program's Policies

- ◇ Your agency should have a written policy about confidentiality and disclosure
- ◇ This policy should govern your daily actions and provide guidance when faced with a difficult situation like child abuse reporting or a subpoena

YOU MAKE THE CALL

- ◇ The law in this jurisdiction mandates reporting by health care providers if children are suspected of being abused/neglected
- ◇ Intoxicated patient comes into the ER with an injury and has her children in tow
- ◇ Nurse must decide: abuse/neglect?
- ◇ What if children can be transported home in a safe manner??

YOU MAKE THE CALL

- ◇ You are an advocate in a mandatory reporter jurisdiction (no privilege defeats duty to report abuse/neglect)
- ◇ You obtain an PO for your client
- ◇ Every Saturday night client invites batterer over for drinks
- ◇ Batterer beats client in the presence of their 3 year-old child

YOU MAKE THE CALL (cont)

- ◇ Client reports this scenario to you each Monday
- ◇ WHEN MUST YOU REPORT? WILL YOU REPORT?

SUBPOENAS

- ◇ Command to appear at a certain date/time to give testimony about a certain matter
- ◇ Subpoena duces tecum: commands a witness who has possession or control of some document/paper that is relevant to the issues before the court to produce the paper/document

SUBPOENAS/ Discovery in Criminal Cases

- ◇ Based upon the right of the criminal defendant to obtain information from the prosecution and other sources to prepare a defense

SUBPOENAS/In Civil Cases

- ◇ Varies from jurisdiction to jurisdiction, but is generally less generous than in criminal cases (defendant's freedom is in jeopardy)

TYPES OF INFORMATION THAT MAY BE DISCOVERABLE

- ◇ Names/addresses
- ◇ Written/recorded statements
- ◇ Photographs
- ◇ Documents
- ◇ Text messages
- ◇ Facebook pages

PROTECTION FROM DISCOVERY MOTIONS

- ◇ Can limit the scope of discovery
- ◇ Can redact (black out) certain portions of the document
- ◇ Can limit lines of questioning for witness on the stand

SAFETY

- ◇ Should be the paramount focus
- ◇ Argue that the safety of your client is in jeopardy if the information is disclosed

DO YOUR STATUTES PROTECTION CONFIDENTIAL STATEMENTS???

- ◇ If not, be careful what you write down
- ◇ Have a written protocol
- ◇ Keep minimal information in client files

WHAT IF YOU RECEIVE A SUBPEONA??

- ◇ Notify supervisor and prosecutor/legal counsel
- ◇ Have written protocols before this happens

Program Protocol

- ◇ What to do if law enforcement arrives intimidating program staff and demanding access to information or shelter?
- ◇ Good policy to instruct staff that only Program Director has authority to allow access to shelter if there is a valid search warrant

