A study of views of Intern Psychologists and Registered Psychologists on the concept of confidentiality

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A study of views of Intern Psychologists and Registered Psychologists on the concept of confidentiality

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DECLARATION

I Cebelihle P. Zungu, declare that this dissertation represents my own work, both in conception and in execution. All sources that I have used or quoted have been indicated and acknowledge by means of completed references.

__________________________
Cebelihle Primrose Zungu

__________________________
Date
ACKNOWLEDGEMENTS

To my King and Saviour Jesus Christ, I give thanks for your presence and power that saw me through and brought this project into completion. A project of this nature can never be achieved in isolation. I would like to thank all those who have helped me throughout this long and difficult journey.

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DEDICATION

I dedicate this dissertation to my late mother Ivey Mevane Zungu. I am what I am today because of your sacrifice, hope and endurance.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECLARATION</td>
<td>i</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>ii</td>
</tr>
<tr>
<td>DEDICATION</td>
<td>iii</td>
</tr>
<tr>
<td>TABLE OF CONTENTS</td>
<td>iv</td>
</tr>
<tr>
<td>ABSTRACT</td>
<td>viii</td>
</tr>
</tbody>
</table>

## CHAPTER ONE INTRODUCTION OF THE STUDY

1.1 Introduction ................................................................. 1
1.2 Background of the problem ................................................ 2
1.3 Theoretical assumptions .................................................. 3
1.4 Motivation of the study ................................................... 4
1.5 Objectives of the study .................................................... 5
1.6 Research methodology ..................................................... 5
1.7 The value of the study ..................................................... 6
1.8 Proposed Scheme of Work .................................................. 6
   1.8.1 Chapter one .......................................................... 6
   1.8.2 Chapter Two .......................................................... 6
   1.8.3 Chapter three ....................................................... 6
   1.8.4 Chapter four ........................................................ 6
   1.8.5 Chapter five ....................................................... 7
1.9 Scheduling ................................................................. 7
1.10 Ethical Considerations ................................................... 7
CHAPTER TWO LITERATURE REVIEW

2.1 Introduction ............................................................................................................. 8
2.2 Ethical Guidelines and Standards in Psychology ................................................. 9
2.3 Foundational ethical principles ............................................................................. 10
   2.3.1 Autonomy ........................................................................................................ 11
   2.3.2 Nonmaleficence ............................................................................................... 11
   2.3.3 Beneficence ..................................................................................................... 11
   2.3.4 Justice ............................................................................................................ 12
2.5 Historical foundations of Psychotherapeutic confidentiality ............................. 12
2.6 Values in psychotherapy ....................................................................................... 13
2.7 Responsibilities towards the client ....................................................................... 16
2.8 The duty to warn and disclosure ......................................................................... 17
   2.8.1 ACA Code of ethics, Section B.1.c: Exceptions ............................................... 18
   2.8.2 APA Ethical Principles, Section 5.05: Disclosures .......................................... 18
2.9 The identifiable case ............................................................................................. 19
2.11 Clients' Informed consent .................................................................................... 22
2.12 The right to privacy .............................................................................................. 23
2.13 Respect of human dignity ..................................................................................... 25
2.14 Client rights to record keeping ............................................................................ 27
2.15 Problematic factors to confidentiality .................................................................. 28
2.16 Access to confidential records ............................................................................ 29
2.17 The clash of cultures in psychology and Law ..................................................... 30
2.18 The change of have an influence in mental health practitioners ......................... 30
2.19 When healing process is tempered with ............................................................ 31
2.20 Summary of literature review ............................................................................. 32
CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Introduction

There are few occupations as rewarding and overwhelming as those in the health care profession. Counsellors, Psychologists, Social Workers and other therapists are referred to as health care professionals. The health care profession provides one with many challenges and opportunities for personal development, such as working within the scope of practice as a clinician. Edge and Groves (1999, p.1) note that “practice of health care is concerned with entering into a social compact not only with all other practitioners but also with the community at large.” They also state that honoring this social compact requires a commitment to excellence in clinical practice and to a set of appropriate moral, ethical, and social behaviors.

The profession of psychology is no exception. Psychologists are expected to render services that will ensure a holistic approach to clients' health. Teadys and Purdy (2001, p. 11) state that at times mental health professionals come to face with ethical dilemmas involving good versus evil, loyalty versus betrayal, justice versus injustice, truth versus lying and so on. One of the ethical dilemmas that have existed for some years is the concept of confidentiality. Health care workers working in any capacity are legally and ethically bound to maintain strict confidentiality with regard to their clients (Ngcobo, 2005, p.1). A breach of such confidentiality is a serious ethical transgression which could result in disciplinary action. Any invasion of a client’s privacy may entail harming the client.
1.2 Background of the problem

Clinicians are dedicated to providing competent health care with compassion and respect for human dignity, and should practice in accordance with the medical code of ethics of the Health Professions Council of South Africa (HPCSA). It is stated that psychologists shall safeguard the confidential information obtained in the course of practice and subject only to the exception, Psychologists shall disclose confidential information to others only with written informed consent of the client, (HPCSA, 2002, p.6). Disclosure of confidentiality is exceptional when a psychologist is permitted by law, to obtain appropriate professional consultations and to protect the client and others from harm. These general guidelines have sometimes been difficult to interpret for mental health practice. Despite the obvious ethical obligations to patients, clinicians are also compelled to consider the requirements of the law and the interests of the general community, (Kaliski, 2006, p.358). Confidentiality is one of the conflicting obligations faced by clinicians. According to Corey, Corey and Callanan (1993, p.102), "confidentiality entails the ethical and legal responsibility of mental health professionals to safeguard from unauthorized disclosure of information given in the therapeutic relationship". Welfel (2002, p.18) indicates that ethical responsibility refers to codes of standard adopted by national professional associations to govern the definitions of behavior for their members and lay out the penalties for misbehavior. It implies that when clients reveal private information, the health care professional must not disclose this information except when legal proceedings arise. Confidentiality is paramount in the development of an effective therapeutic relationship between the therapist and client.

Traditionally it has been held that clients retain power and the right to waive the confidentiality existing between them and the therapist. Supreme Court decisions have recognized the existence of this right (Hannah, Christian, & Clark, 1981, p.113). The fact that a therapist may be required to divulge information about his/her clients when subpoenaed in a court of law may cause clients to lose confidence in health care professionals.

One of the safeguard procedures for protecting client information is that the client
should be informed of the times when the clinician or therapist will not be able to prevent disclosure of records or communication. However, it is questionably impossible to provide effective therapeutic interventions without the client being assured of absolute confidentiality. Ngcobo (2005, p.4), states that the failure of absolute confidentiality renders the therapeutic process ineffective. Clients may terminate therapy prematurely and may not divulge essential information. Such clients may without the necessary therapy, become dangerous to society and to themselves.

1.3 Theoretical assumptions

Discourse analysis investigates the principles of language in action, and sets of social practices that are linguistic. Painter and Thernon (2001, p.1) state that discourse may refer to frameworks of meaning that are realized in language but produced by institutional and ideological structures and relations. Language constitutes who we are and constructs the position we occupy. Social constructivism maintains that meanings are produced by processes of reflexivity. The research approach that seeks to analyze how signs and images have powers to create particular representations of people and objects that underlie our experience of these people and objects is called social constructivism, (Terre-Blanche and Durrheim, 1999, p.148).

Ngcobo (2005, p.2) asserts that discourse analysis treats the social world as a text or rather a system of texts. When progress and change are notions built into contemporary political discourse and things are changing so fast, it is hardly surprising that this dynamic should be reflected in our everyday world of experience of the legal system. Confidentiality is an ethical principle rather than a legal one, (Dolgoff, Loewenberg & Harrington, 2005, p.75). This raises an argument on discourse about the concept of confidentiality for the clinician, the client and the legal system. Lawyers impose an order based on their external work which is embedded and informed by their belief system. This means that their preconception and assumption will inform and structure the content and process of their legal proceedings, Ngcobo (2005, p. 2).
1.4 Motivation of the study

Gillon (1994, p.939) explains that the question of access to clinical records is one of the most difficult areas for health care workers. Many records consist of intimate and personal details about clients and they expect that disclosure will remain in confidence. The confidentiality of such records must be rigorously guarded and these records may only be released, particularly where litigation is involved, with the explicit consent of the individual to whom they refer. One of the duties of a therapist is to safeguard the records of clients. According to the Health Professions Council of South Africa Act, 1974 (Act No. 56 of 1974), the Psychological Act binds psychologists not to release any information pertaining to therapy without the consent of the party involved. On the 26th of January, 2005, the Mercury newspaper published an article based on a dispute between the court and a psychologist who refused to release records relating to a rape survivor whom she had consulted.

According to the court documents, the psychologist conducted psychological tests and provided the alleged victim with psychotherapy. The accuser's lawyers approached the Regional Court for an order compelling the psychologist to hand over documents and psychological tests results relating to her treatment of the complainant, which she resisted. The magistrate ruled that the psychologist had to hand over to the defence various consultation notes, records, tests, and results pursuant to the psychotherapy sessions with the complainant. The psychologist maintained that the information was confidential. According to Dolgoff, Loewenberg and Harrington (2005,p.75) an ethical dilemma occurs whenever a practitioner has to choose among conflicting claims and to operate in accordance to the ethical code, such as a client's right to privacy and the rights of other people and of society to certain information. It is generally assumed by health care professionals that a client's reliance on confidentiality promotes trust in the health care worker.
1.5 Objectives of the study

- To ascertain whether therapy is ineffective when confidentiality is breached;
- To discover whether people who need therapy may be deterred from requesting help if confidentiality is not absolute, and
- To find out whether clients who have disclosed confidential information to their therapists and are, therefore, likely to use psychological services, if necessary.

1.6 Research methodology

The study adopted a qualitative approach which allowed for a rich and detailed description of participants' experiences. This study therefore aimed at describing rather than predicting and to build theory inductively rather than deductively. To this end, the researcher planned to develop a phenomenological question which allowed participants a space for to answer more fully or freely the aspects of their experience about which they had more to say. This allowed the personal interpretations and perspectives as well as the actual nature of the participants experience to emerge (Barker, Pistrang & Elliot 1994, p.72). The sample was purposively selected as respondents needed to have experienced the phenomenon that was being studied, the views and experiences of confidentiality within the psychological systems. For this purpose, six registered Psychologists and four Masters second year students (for 2007) from the department of Psychology at the University of Zululand were targeted.

Once the data had been collected a phenomenological approach was used to analyze the data. In conjunction with the above approach an interpretive form of analysis was used to extract common themes that emerged from participant's experiences and views. It is the belief of the researcher that creating a space to dialogue with injunction to disclose information at the expense of confidentiality, trust and rapport with one's therapeutic client, is an important debate to enter into.
1.7 The value of the study

This research on the psycho-legal aspects of confidentiality will clarify whether effective therapy is governed by the best interest of the client or by the court system when public peril is involved. Furthermore, this study aims to empower psychologists to stand by their duty to publicly advocate the rights of their clients, and to bring this advocacy to the legal system.

1.8 Proposed Scheme of Work

1.8.1 Chapter one

The motivation for the investigation, is discussed, the problem statement is stated and the aims of the study are outlined in chapter one. Also provided in this chapter is the plan for the organization of the entire scientific report.

1.8.2 Chapter Two

Chapter two focuses on the theoretical background of the study. A thorough review of previous work on the concept of confidentiality provides a broader picture on the present study.

1.8.3 Chapter three

A detailed description of the epistemology, research design, and methodology is the focus of the third chapter.

1.8.4 Chapter four

Presentation, analysis, and interpretation of data is given done in this chapter.

1.8.5 Chapter five

Lastly, this chapter looks at the conclusion of the study. This section focuses on the
limitations of the study and recommendations and suggestions for follow up research are presented.

1.9 Scheduling

- Obtaining informed consent from participants – 2 weeks
- Distribution of questionnaire and data analysis – 8 weeks
- Interpretation of findings and drawing conclusions and making recommendations – 10 weeks

1.10 Ethical Considerations

The first ethical issue that was considered was to gain consent from participants. Cozby (2004) suggests that the consent form be written in the language that is commiserating with the expected language level of the participants. The consent form of the researcher included the purpose and voluntary nature of the research. Permission was obtained from the participants and these were requested to take part in the study. The subjects were then assured of anonymity and confidentiality in both written contract and a verbal agreement.
CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter presents a review of literature which examines or determines what is already written or known about the topic to be studied so that a comprehensive picture of the state of knowledge on the topic can be obtained.

There is no doubt that professional and ethical practice is a potent and dynamic area (Tribe & Morrissey 2005, p. 3). Changes in research and practice, legislation, and professional and ethical guidelines may all mean incremental and paradigm shift. Health care workers working in any capacity are legally and ethically bound to maintain strict confidentiality with regard to their clients. Breach of confidentiality is a serious ethical transgression, which could result in disciplinary action and many also contribute a wrongful invasion on the client’s privacy thereby entitling the latter to sue for damage. Whistle this sounds practically impossible. Clients or patients confidentiality is, nevertheless not absolute. There are certain circumstances in which clinicians are obliged to disclose information about their client’s i.e. where disclosure takes place without consent of the patient, express or implied an example of implied consent would be where the practitioner sends an account to the patient’s medical scheme, in which the diagnosis of his or her condition appears in code, where disclosure is made obligatory by judicial order, or where disclosure is manifestly in the public interest, Ngcobo (2005, p.1).
2.2 Ethical Guidelines and Standards in Psychology

There is no doubt in both their research and the practical applications of their procedure; psychologists have long been concerned with questions of their professional ethics. Anastasi and Urbina (1997, p. 533) state that a concrete example of this concern is the systematic empirical program followed in the early 1950s to develop the first formal code of ethics for the profession. This extensive undertaking resulted in the preparation of a set of standards that was officially adopted by the American Psychological Association (APA), and first published in 1953. This means that the Psychology's global view of practice is grounded in APA ethics code of conduct. The APA code provides an overarching structure for evaluating the psychologist's decision-making process. In South Africa psychologists are guided by the guidelines offered by Health Professions Council of South Africa (HPCSA) (2004).

Ideally the code of ethics should serve as a guide for the psychologists to resolve the moral problems or dilemmas that they may confront within the profession. However, in reality the code of ethics is not able to provide the psychologist with necessary guidance in all situations. Koocher (1994), notes that the code provides a vast ray of information but lacks clarity. Wassenaar (1998) suggests that the code provides minimal guidelines and is not effective in anticipating or resolving all ethically challenging situations. HPCSA (2004) guidelines support this view by explaining that it is impossible, to develop a complete set of specific ethical prescriptions applicable to all conceivable real life situations. In concrete cases psychologists may have to work out for themselves what course of action best is defended ethically.

The hallmark of profession is that they represent a group of people who earn a living by undertaking a common activity and who regulate most aspects of this activity themselves, (Allan, 2001, p.3). In order to govern themselves, the
members of the profession must firstly form a body that has a Constitution. Examples of such bodies in South Africa are the Medical Association of South Africa (MASA) and the Psychological Society of South Africa (PsySSA). Secondly, the professional body must publish a professional code of rules, sometimes called an ethical code, to regulate the professional activities of members of the profession. Professionally psychology has its own set of ethical guidelines and standards. Seligman (2006) emphasizes that familiarizing oneself with and abiding by those ethical standards is essential to sound clinical practice for many reasons including:

- Ethical standards give strength and credibility to the mental health professions;
- Ethical guidelines help psychologists make sound decisions;
- Practice in accord with established ethical standards can protect clinicians in the event of malpractice suits or other challenges to their competence and
- Providing clients with information on when psychologists can and cannot maintain confidentiality, as well as on their ethical guidelines, affords clients safety and predictability and enables them to make informed choices about their treatment.

2.3 Foundational ethical principles

Kaliski (2006, p. 357) defines ethics as the study and practice of “what ought to be.” Ethical principles and the law frequently interact. The law is often in conflict with, and intolerant of, ethical opinion, whereas ethical issues often become legal issues. There are four clusters of moral principles which form the foundations of professional ethics and they will be discussed below.

2.3.1 Autonomy

According to Welfel (2006, p. 32) respect for autonomy means respect for the
inherent freedom and dignity of each person which is respect. In other words, because they are people with inherent dignity, all individuals should be free to make choices themselves. This implies that any point where an individual needs to make a decision between alternative courses of action he should be allowed to do so free of compulsion or coercion by any other external agent, Steere (1984, p. 7). An immediately apparent difficulty with the application of this principle within a therapeutic relationship is the conflict between attempts to preserve individual autonomy and simultaneous necessity for laws by which the legal system impose when a public peril is involved, (Steere, 1984, p.7).

2.3.2 Nonmaleficence

Most health care professionals pledge codes of care come from the principle paraphrased from the Hippocratic Oath statement which states that “I will never use treatment to injure or wrong the sick”. Edge & Grooves (1999, p.46) this in some way seems very similar to the duty of beneficence, where the practitioner works to maximise the good for the patient and minimize harm. In simple terms it means that one should primarily avoid causing harm. This principle is articulated in APA ethics code in Standard, 14. APA, (2002) and Standard 26, HPCSA, (2004). Psychologists take reasonable steps to avoid harming their clients. This principle may be held as stronger than beneficence (Anderson & Barret, 2001).

2.3.3 Beneficence

The above term is defined as the responsibility to do good, Welfel (2006, p.34). This principle implies that psychologists should constantly strive for the welfare of the patient. This may involve making a benefit or risk determination, such as having to decide whether a particular harm is worth risking if a greater good can be achieved.
2.3.4 Justice

This idea is a basic principle that deals with fairness and equitable distribution of risks and benefits. The maintenance of this ethical principle is seemingly easy in the abstract and complex in application as it looks at the concept of fairness, Edge & Groves (1999, p.48). This principle calls for therapists to recognize the dignity of all people and avoid bias professional action (Welfel, 2006, p.35). This suggests that variables that are irrelevant to a person’s need for treatment should not be considered. These variables could be age, race and gender.

These four principles are relative to each other; however they sometimes overlap but in other cases they are in conflict with each other. For example, until recently responsible caring (beneficence) was the dominant ethical principle in the western world. Silverman as cited in Allan (2001, p.17) states that it does not carry weight anymore and respect for human dignity and rights, and in particular the right to self determination, appears to be the dominant force in the western culture today. Put differently, in our culture we have moved away from the paternalistic system to an approach that values the right of self determination of individuals.

2.4 Ethical principles underlying confidentiality

A historical legal development that has emerged out of the Tarosoph and other cases is the way in which psychologists interpret confidentiality, privacy and privilege, (Bersoff, 1995). Confidentiality is the psychologist’s ethical obligation to safeguard client communication (Baird, Laing & Rupert, 1987). This is a general rule for many professions. Research has shown that clients expect psychologists to maintain absolute confidentiality as a general rule (Miller & Thelen, 1986). Psychologists also have a primary obligation to respect the confidentiality rights of those whom they work with. Legally and ethically, clients cannot be promised absolute confidentiality.
Welfel (2002, p.69) explains that the importance of confidentiality derives from the ethical principles of autonomy and fidelity, and second from the principles of beneficence and nonmaleficence. Respect for autonomy includes and acknowledgement that each person has the power to decide who may have access to private information. Newton (1989) argues that privacy is an essential component of individual selfhood. Principles of beneficence and nonmaleficence come into play because breaches of confidentiality may leave clients feeling betrayed and can thereby reduce or destroy their engagement in counselling process.

2.5 Historical foundations of Psychotherapeutic confidentiality

Howard & Shelton (1994-95), indicated that the historical foundation of psychotherapeutic confidentiality is usually assumed to be the Hippocratic Oath, the oldest known statement of medical secrecy: “Whatsoever I see or hear in the course of my profession in my intercourse with men, if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets.” Hippocrates belief in the obligation to protect patient information was based on ethical principles, not fear of lawsuits or the threat of licensure revocation, Roback & Shelton (1995).

2.6 Values in psychotherapy

Winnicott’s (1965) ideas of psychotherapy illustrate the importance of safety and trust in the therapeutic relationship and provide insight into the rational and importance for professional communication to be extended to psychologists and their clients (1965). Winnicott (1965) felt that the therapist task is to provide a “holding environment” for the client so that he or she might have the opportunity to experience safety and allow the true self to emerge. Without confidentiality, psychologist risk or even encourage the client to play into what Winnicott describes as the “false -self” (the self-protecting caretaker that monitors what is being said to the therapist to protect the true self from consequences of the law).
Obligation by law to disclose so called “privileged” information undermines this trust and safe environment, which is the cornerstone of therapy and thwarts the client’s ability to communicate honestly with the therapist. This not only has repercussions on the way the client relates to the therapist, but also impacts on the way the therapist communicates with the client. How would the therapist be able (without conscience) to create the safe environment that is needed and if he fails to inform the client of this, may be seen as entrapment? Therapy should create a “containing environment” where feelings of hatred and aggression can be explored freely (without consequences). Only then can a person get into touch with and integrate feelings of love and hate. This is the reason a person is in therapy to begin with- to explore these desires in a safe environment and to diffuse potential danger. It is also relevant to mention that much is discussed in therapy takes place in a potential space.

Confidentiality is paramount to the development of an effective therapeutic relationship between a therapist and client. Clients, will at times, expect absolute confidentiality and this may precipitate a dilemma in professional ethics. Whistle trying to protect the client and nurture his or her expectations this may be at the expanse of innocent people. The dilemma occurs because of the conflict that tends to result when legal, moral, personal, and professional responsibilities clash in a fiduciary relationship between the therapist and client. Although there can be guidelines governing proper handling of client’s confidentiality, there are still many situations that create conflicts and ethical dilemmas for clinicians. These conflicts are often induced by individual interpretations of the ethical codes as situations in which the clinician’s code may conflict with other personnel, professions and organisational values. Professional codes are also limited by the fact that they are written within general enough views to be used universally, but not specific enough to be applied to situations in which a dilemma may occur, Ngcobo (2005, p.3)
Pryzwansky & Wendt (1987, p.63), stated that confidentiality is designed to protect the privacy and welfare of clients. At the same time, privilege and confidentiality are frequently confused concepts, creating issues for the psychologist whereby knowledge and sensitivity are needed. Privilege (communication) is a legal term, granted by a state law to clients, which defines the type of relationships that prevent information learned as part of such relationships from being disclosed in legal proceedings, or to third parties without expressed consent of the client. While the psychologist (or other health worker) is explicitly named in the statute, the privilege exists for the client. If the client waives the privilege, the psychologist may be compelled to release information or testify. Privilege is also rarely absolute, and some situations, such as child abuse the psychologist may be legally required to make a report to authorities.

Confidentiality, in contrast to privilege, refers to a professional standard of conduct ad as such, is an ethical principle without a legal basis. Therefore in ordinary situations, a professional obligated through a professional code of ethics not to discuss information about a client with anyone. Regarding the disclosure of information, two types of problems occur:

a) The psychologist, through carelessness, reveals confidential information
b) The psychologist makes a decision to reveal information

In the first instance, information can be released by professions teaching classes and not sufficiently disguising case examples from their practice, maintaining open filing systems while allowing non professionals to have access to information, and in consultation with other staff. These situations can easily occur, and create problems if not monitored carefully by the psychologist. The second problem, regarding the conscious decision to release information, creates the greatest controversy, especially in terms of situations that would justify this decision. The focus of this controversy, involves the “clear danger to the person or to others.” In some instances, psychologists must make a difficult decision when the client will move from talking about harmful situations to actually taking action. While physical harm to self or others may present
more obvious choices, insidious forms of harm, such as financial ruin, create the necessity for a difficult decision Pryzwansky & Wendt (ibid).

2.7 Responsibilities towards the client

According to Steere (1984, p.37), clients who consult psychotherapists do so with the expectation that the therapist will be able to assist them in resolving their difficulties. The principle of maleficence and beneficence dictate that in undertaking psychotherapy with a client, the therapist will possess the necessary competence to inform services which will not harm the client and which will have beneficial results. Freedom of clients is defined as the capacity of the individual to choose the degree of participation in the change process or to decline to take part at all. It also involves the opportunity to set or alter goals, to be informed about procedures, employed, and to withdraw without undue pressure to continue.

In response to these criteria of freedom from coercion and constraint, the doctrine of informed consent, previously manifested mostly by medical treatments and biological experimentation, inescapably becomes an important feature of voluntary participation in any form of psychotherapy. The requirements of accountability most clearly relate to the need to protect the individual from coercion, that is, from unwarranted uses of power by therapists. It prevents not only careless care, but also abuses of power inherent in the therapist's position visa-a-vis the client, Lakin (1988, p.141).

In view of Woody, Hansen, & Rossberg (1989, p.250), perhaps one of the most hallowed dimensions of counselling psychology is the relationship that is established with the client. Relationship is generally viewed as the essence of change, regardless of the theory that is espoused. Psychologists are continually cognizant of their own needs and of their potentially influential positions visa-a-vis persons such as clients.

The secrecy in which therapy is conducted is one of the most sensitive issues in any psychotherapy. Clients are of course concern that their disclosures should not become
public, nor revealed to their detriment or shame. Confidentiality is at risk, however, especially in group therapies. The debate within the health professions about the range and the limitations of confidentiality has become increasingly complicated. Should assurances of confidentiality cover minor children with respect to their parents or guardians? What about instances where self-destructive acts are reported or when the individual seems likely to harm others. Some states have made therapists quite uneasy about their own liability if a patient commits a crime, Lakin (1988, p.12).

According to Steere (1984, p.34), numerous authors have discussed the issue of confidentiality in psychotherapy. The rationale for the ensuring of therapeutic confidentiality is based on the principles of autonomy (the client should be able to choose which information he wishes to reveal to which persons), beneficence (the client will be able to reap the full benefits of therapy without a trusting relationship with the therapist), and malificence (the client may be harmed by the release of private information to the other sources). Some authors question the necessity for absolute confidentiality in non-psychoanalytic therapy, but still maintain that in order to protect patients from potential harm, it is in general essential to respect confidentiality.

2.8 The duty to warn and disclosure

According to Welfel (2002, p.81) communications from clients who are dangerous to themselves or other people are not protected by the same level of confidentiality as other material. When mental health professionals judge a client to pose an imminent threat to others or to the client to him-or herself, the ACA and APA ethics codes allow disclosure of confidential information. The wording in the codes is as follows:
2.8.1 ACA Code of ethics, Section B.1.c: Exceptions

The general requirement to keep information confidential does not apply when disclosure is required to prevent clear and imminent danger to the client or others or when legal requirements demand that confidential information be revealed. Counsellors consult with other professional when in doubt about the validity of an exception Welfel (2002, p.81).

2.8.2 APA Ethical Principles, Section 5.05: Disclosures

Psychologists disclose confidential information without the consent of the individual only as mandated by law or where permitted by law for a valid purpose, such as (1) to provide needed professional service to the patient or the individual or organizational client, (2) to obtain appropriate professional consultants, (3) to protect the patient or others from harm, or (4) to obtain payment for services, in which instance, disclosure is limited to the minimum necessary for that purpose Welfel (2002,p.81).

Most material discussed in therapy session is fully confidential, meaning that the therapist may not disclose information about the client to any party without the client’s permission. However, there are some most important limits to confidentiality that clients are not aware of. Currently, the law requires that the mental health professionals contact appropriate authorities if there is suspected child abuse, elderly abuse, or dependant adult abuse, or if the client represents an imminent thereof to himself or others. Pate cited by Ngcobo (2005, p.6), defines duty to warn as the possibility of psychotherapist to breach confidentiality if client or other identifiable person is in clear or imminent danger.
2.9 The identifiable case

The legal precedent of this concept was set in the case Tarasoff versus Regents of the University of California (1974, 1976). In this case, according to Barlow & Durand (2001, p.501), "a university student by the name of Prosenjit Poddar, killed a fellow student, Tatiana Tarasoff, who had previously rejected his romantic advances. At a time of the murder he was being seen by two therapists at the University Health Center and had received a diagnosis of paranoid schizophrenia. At his last session, Podder hinted that he was going to kill Tarasoff. His therapist believed this threat was serious and contacted the campus police, who investigated the allegations and received assurances from Podder that he would leave Tarasoff alone. Weeks later, after repeated attempts to contact her, Podder shot and stubbed Tarasoff until she died. After learning of the therapist's role in the case, Tatiana Tarasoff's family sued the university, the therapists, and the university police, saying that they should have warned Tatiana that she was in danger. The court agreed, and the Tarasoff case has been used ever since as a standard for therapists concerning their duty to warn a client's potential victims." What this reflects is the formulation of duty of therapists to use reasonable care to protect third parties against danger posed by their clients. This imposed an affirmative duty on therapists to warn a potential victim of intended harm by the client, stating that the right of confidentiality ends when the public peril begins.

The psychologist's duty to warn impinges on the core essence of the therapeutic process and what it is designed to provide for the individual who is seeking help or healing. This individual requires a space in which to become totally vulnerable. It is only in the safe environment of therapy that he or she can expose the dark side and recognise the whole self. For the individual who feels threatened or misunderstood by the outside world, the promise of confidentiality provides one of the only outlets of emotional pain (Ngcobo, 2005). The complete truth needs to be expressed in a non-judgemental, acceptable and contained setting. The therapist's obligation, in terms of law, places limits on the degree of safety he can provide his or her client. Their alliance
becomes questionable as their relationship is now conditional on the type of information elicited. Therapy becomes an agent of the harsh society the individual seeks refuge from and even be more detrimental than having sought no help at all. Therapy may well be one's final attempt and last resort of finding hope and help.

2.10 Privilege communication in therapy

Schultz (1990, p.1) explains that most therapists, whatever their discipline may be, agree that breaking confidentiality creates significant problems. It can destroy therapeutic relationship and may risk a malpractice suit. The ethical codes of various helping professions are intentionally vague, general, and elastic to cover all types of situations, but all take confidentiality very seriously. All states now have reported laws which require therapists to break confidentiality and report any child abuse suspicion to law enforcement or child protection agencies. All states therefore require putting the child best interest above the therapeutic relationship. It has been pointed out that when therapists treat suspected victims there is usually no breach of confidentiality in reporting the abusers, since the therapeutic relationship is with the victim. But when the evidence of abuse comes from the suspected abuser, difficult ethical issues arise. This situation is particularly difficult for therapists who work with sex offenders and that these issues have not been sufficiently considered by the authors of the reporting laws.

There is much confusion and misunderstanding the terms confidentiality and privilege communication (Shuman & Foote, 1999). The two concepts are not interchangeable because they hold important differences in their meaning. The legal term privilege communication refers to a rule in evidence law that provides a litigant in a legal proceeding with the right to withhold evidence that was originally communicated in confidence. Whereas the term confidentiality deals with preventing voluntary disclosure of inappropriate material by mental health professionals, the term privilege refers to the rules for preventing involuntary disclosures requested by parties in a legal action, (Roback, Ochoa, Bloch, & Purdon, 1992). Confidentiality originated as an ethical standard for the medical profession and aimed to uphold the integrity of the individual
coming to seek help and free him or her from fear of disclosing anything that might help the doctor decide on an appropriate treatment. Case law, statutes, and licensing regulations have given confidentiality legal statutes. Therapists are civilly liable for breaching confidentiality as well as risking the loss of their licence. Confidentiality becomes of legal concern through legislative recognition and court precedent. Disclosure of confidential information could be the basis for professional discipline through an ethics complain or legal action through civil or criminal liability Roback et al (1992).

The major and most obvious ethical issues raised in the first type of appearance as a witness is that of confidentiality. It must be remembered that privilege communication is the client's and not the psychologist's, so that if the client agrees to the psychologist's revealing aspects of the therapeutic process in court no conflict need arise. However, if the client does not grant this permission, the psychologist is bound by his professional ethical code not to reveal such information. The legal systems major concern in criminal trials is the pursuit of justice and its task is to discover the guilt or otherwise the accused, Steere (1984, p.80). Schultz (1990, p.2) felt that confidentiality does not prevent the professional from testifying in a court of law; such a prohibition would require statutory authority for establishing privileged communication. Even then there would exceptions. There are three exceptions to the therapist honouring privileged communication:

1) When the court appoints a psychologist to perform an examination;
2) When the client bases a legal claim or defence on his or his mental condition, and
3) When professional opinion about mental or emotional problems may be necessary to assure proper legal handing or justice.
The criteria that justify confidentiality are:

1) The communications must originate in a confidence that will not be disclosed;
2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
3) The relation must be one which in the opinion of the community must sedulously, and
4) The injury that would inure to the relation by disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of the litigation.

Unless these four criteria are fulfilled, confidentiality cannot be expected, and failure to establish confidentiality negates the possibility of privilege communication.

2.11 Clients' Informed consent

The need to protect a client's privacy invokes the issue of consent for treatment. According to Everstine, Everstine, Heyman, True, Frey, Johnson and Seiden (1980, p.151) consent as a legal concept has three basic elements: 1) capacity of competence; 2) information, and 3) voluntariness. The capacity of competence raises the basic question; can the person engage in rational thought to a sufficient degree to make competent decisions about his or her life? Competence is often used to capture kinds of abilities needed to participate effectively in all therapeutic stages (Costanzo, 2004). Direct consent should be obtained from all competent persons. For persons legally declared incompetent (such as minors) substitute consent from parents, guardians or court appointed conservators should be obtained (Everstine at.el, 1980).

For consent to be “informed” clients must possess relevant information about the procedures that are to be performed. Beahrs & Gutheil (2001) state that when clients are well informed, they are likely to demonstrate therapeutic benefits. In this regard clients may be encouraged to initiate counselling and become more fully engaged in therapy. Clients have a legal right to have information about them kept confidential.
Indeed confidentiality is both an important concept in the law and in the ethical practice of therapy Tribe & Morrissey (2005, p.109). The fundamental ethical principle underlying the precepts of informed consent is that of respect for autonomy Welfel (2006, p. 104). Recent literature on ethical issues in psychology has focused on informing the psychotherapy client regarding nature of, and exceptions to, confidentiality in client-therapist communications (Nowell & Spruill, 1993, p.185). Two major considerations are what information is provided and how the information is communicated.

Everstine (1980, et. al) indicate the kind of information that should be provided generally include the following: a) an explanation of the procedures and their purpose; b) the role of the person who is providing therapy and his or her professional qualifications; c) discomforts or risks reasonably to be expected; d) benefits reasonably to be expected; e) alternatives to treatment that might be of similar benefit; f) a statement that any questions about the procedures will be answered at any time, and g) a statement that the person can withdraw his or her consent and discontinue participation in therapy at any time. This information should be presented in language that the client can understand. The client should not be treated paternalistically or have his or her freedom to choose usurped by a mental health professional. The APA Ethical Principles, Section 3.10 states that psychologists should inform clients as early as feasible in the therapeutic relationship about the nature and anticipated course of therapy, for example, limits of confidentiality.

2.12 The right to privacy

Patients have traditionally expected doctors to keep their secrets and to maintain silence regarding their confidential information. If doctors break that obligation, they may be disciplined by their professional body, the General Medical Council, and find themselves defendants in an action in a court of law for breach of confidence. In the light of such an expectation many patients and doctors are surprised to be told that the doctor can be forced to give evidence in the courtroom about the patient's confidential information. That surprise borders on incredulity when they find that special rules of evidence protect lawyer-client information from disclosure, McHale (1993, p.1).
According to Benjamin (2005) the only professional communication currently protected under South African law is that between an attorney and his or her client.

Anastasi and Urbina (1997, p.540) define the right to privacy as the right to decide for oneself how much one will share with others one’s personal life, this right is further characterised as essential to ensure freedom and self determination. According to Devenish (1999, p.135), privacy is a basic human need, essential for the development and maintenance both of a free society and a mature and stable personality for an individual. It is a profoundly cherished as a right by persons; both in relation to intrusion by the state and as far as other people in the community are concerned. By its very nature, it is also a right which is inextricably intertwined with human dignity. The right to privacy is, therefore, based on human dignity and has its objective the preservation for each individual of the choice of when and how much he or she will allow others to know about his or her personal affairs or interfere with his or her mind, body, or private activities. As an autonomous concept and as an individual right, privacy is a relative newcomer to the body of justiciable and fundamental rights. Justice Stevens, in the jurisprudentially significant American judgement of Whalen v Roe, observed that this right embraces both an ‘individual interest in avoiding disclosure of personal matters’ and a similar, but nonelessness distinct, interest in independence in making certain kinds of important decision.

McQuiod-Mason quoted by Devenish (1999, p.135), comments that the significance and nature of this right is recognised by social scientists as essential for the preservation of an individual’s human dignity including his or her physical, psychological and spiritual well being. He further comments that social scientists perceive the right to privacy as the right to have control over one’s information preserve, and to maintain a status of personal dignity, while invasion of privacy is an ‘immoral affront to human dignity’. The right to privacy has become widely recognised in the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights, the European Convention Human Rights, and the American Convention on Human Rights. It is explicitly mentioned in the African Charter on Human and Peoples Rights, and is also
found in most domestic bills of rights.

Literature indicates that the term 'privacy' and cognate terms like 'private', 'secret', and 'autonomy', advert to a variety of heterogeneous behavioural and moral issues, such as abortion, contraception, euthanasia and homosexual sodomy, that are only tenuously linked together their common denominator being the acute controversy they precipitate regard to the extent and nature of their protection. Wacks as cited in Devenish (1999, p.136) comments that the discourse on privacy is anything but content. An individual's right to privacy encapsulates an intricate and complex set of social interactions, dependent on prevailing moral and social norms. One of the immanent themes of the 1996 constitution, as a constitution of liberty has the limits it places on what the state can affect in the public interest.

2.13 Respect of human dignity

Warren (2004, p.14), is of the view that the interest of the professions in ethical matters has grown considerably in recent years as professional conduct has come under increasing scrutiny. According to Pryzwansky & Wendt (1987, pp.45-6), psychology as a profession has a moral dimension relative to professional practice. It is embodied within the ethical code developed by the American Psychological Association (APA) and codes developed by virtually every national level professional providing treatment services to the public. Additionally, licensing and regulatory boards have adopted rules for professional code for practical reasons such as a desire for respect and a good reputation within the professional community or the possible loss of license by the licensing boards. However, most professionals support their professional code because they believe it is good and justifiable.

Psychologists respect the dignity and worth of the individual and strive for the preservation and protection of fundamental human rights. They are committed to increase knowledge of human behaviour and of people's understanding of themselves and others and to the utilization of such knowledge for the promotion of human welfare.
While pursuing these objects, they make every effort to protect the welfare of those who seek their service and of the research participants that may be the object of study. They use their skills only for the purpose consistent with these values and do not knowingly permit their misuse by others. While demanding for the responsibility this freedom requires competence, objectivity in the application of skills, and concern for the best interest of clients, colleagues, students, research participants and society. In the pursuit of these ideals, psychologists subscribe to these principles in the following areas:

- Responsibility
- Competence
- Moral and legal standards,
- Public statements
- Confidentiality
- Welfare of consumers
- Professional relationships
- Assessment techniques, and
- Care and use of animals
2.14 Client rights to record keeping

It becomes clear that there is number of legal matters that clients are not aware of which may impede the smooth running of therapy. The court system of defining rights tends to collide with one of the health profession. One of the first tasks that lie on the hands of a therapist is to learn what rights clients have and to inform clients of them. Gladding (2000, p.70), mention that there are two main types of client rights: implied and explicit. Both relate to due process. Implied rights are linked to substantive due process. When a rule is made that arbitrarily limits an individual (i.e. deprives the individual of his or her constitutional rights), he or she has been denied substantive due process. Explicit rights focus on the procedural due process (the steps necessary to initiate or complete an action when an explicit rule is broken). An individual's procedural due process is violated when explicit rule is broken and the person is not informed about how to remedy the matter.

Gladding (ibid) continues to say a client has a right to know what recourse he or she has when either of these two types of rights is violated. Records of all clients are legally protected except under special circumstances. These special instances could be when the law system divulges into clients records without concern from the parties involved. Legally, mental health practitioners are required to protect clients of all ages by keeping records under lock and key, separate from any required business records, and disclosing any information about a client without that person's written permission. Retention of records can be jeopardised by the so called "best evidence "rule. When courts begin to require mental health professional to provide information material concerning their clients discourse then ensues. The court have held that professional have limited property right in their records. This means that if a client wants all records destroyed for instance, to avoid discovery by a party opponent in an approaching legal action – the professional does not have to comply with the demand. In fact, the professional will be foolish to do so. She or he could be charged with purposefully destroying evidence, with all the possible sanctions that could accordingly be imposed,
and could also incur personal liability if, for example, the records were later needed as a
defence in a malpractice action brought by the client. As an example, a client was told
the results of her psychological tests by her therapist and, despite efforts by the
therapist to resolve her paranoid reactions, demanded that the therapist turn over the
entire file to her to be destroyed. Both the therapist and the client sought legal counsel,
both received the same legal advice, namely, that the therapist has a right to test
protocols and is justified in retaining them for professional protection, Schultz (1990,p.
5).

2.15 Problematic factors to confidentiality

Steere (1984, p.34), states that several factors are making the maintenance of
confidentiality increasingly problematic for therapists. The major difficulties appear to
derive from the increased subsidization of therapy fees by third parties such as medical
aid associations, the increasing use of computer storage for confidential material, the
nature of therapeutic work in institutions or mental health agencies and several recent
legal rulings which appear to reduce the patient's rights to confidentiality and emphasize
the demands on the therapist to breach confidentiality in certain circumstances.

The major recent area of concern has been the legal injunction on the therapist to
breach confidentiality when the client is perceived to be dangerous to him and others.
Here 'dangerousness' has not been clearly defined and appears to encompass any
form of criminal act. Robinsons as cited in Steere (1984:35) argues against this broad
definition and recommended that the concept of dangerousness be limited to private
harm. Often, psychologists are faced with decision wherein there exists a conflict of
obligations in terms of professional duties or even between professional standards and
human obligations.

Steere (1984) continues to mention that mental health professionals are concerned
about the negative effects of the breach of therapeutic confidentiality involved in
warning the potential victim. Taking into account the considerable difficulties in
predicting dangerousness, it is likely that in many cases the client may not really carry out the intention expressed in therapy and, in such cases, the loss of trust in the therapeutic relationship may lead to the client terminating a potentially beneficial therapeutic alliance. In addition, it is felt that, where it publicly known that the therapist had a legal duty to inform the police should the client appear to constitute a threat to the safety of a third party/ person, many clients would feel inhibited from discussing violent impulses and thoughts in therapy while other would not enter therapy at all, thus prohibiting psychologists from offering help to such people in controlling their thoughts and impulses. The inability to help such people in therapy would in fact make them potentially more dangerous to society.

2.16 Access to confidential records

Insurance companies which are increasingly bearing the financial burden of many clients’ therapy payments are naturally concerned about the nature and effectiveness of the services for which they are paying and this has led to their increasing demands on therapists for information regarding the diagnosis, treatment plan and therapeutic progress of individual clients. Many therapists are concerned about the release of this information to such bodies particularly where the client’s employer may also have access to it. Increasing, large institutions and therapeutic agencies are making use of computer storage systems for confidential data. While this facilitates the efficient organization of the institution it also provides easier access to confidential information by many potentially interested parties. There is special concern over the fact that many government agencies can gain access to such information by putting their own computers directly on line to an institution’s systems and, through this so called ‘computer rape’ obtain confidential data without the institutions knowledge.
2.17 The clash of cultures in psychology and Law

Bersoff, 1999 as cited in Costanzo (2004, p.8) indicate that many scholars have found it useful to think of psychology and law as fundamentally different cultures. The concept of culture has been defined in a variety of ways. Triandis (1996, p. 407) wrote that culture is reflected in shared cognitions, standard operating procedures, and unexamined assumptions. Culture has also been defined as the set of attitudes, values, beliefs and behaviours shared by a group of people, and communicated from one generation to the next (Mastumoto, 1997, pp. 4-5). People from a particular culture tend to share basic assumptions about the relative importance of competing goals, how disputes should be resolve, and what procedures to follow in striving for goals.

By comparing the cultural tendencies of law and psychology, we can understand why psychology and law have become frustrated with each other (Costanzo, 2004, p.8). Haney, (1981) points out that psychology is descriptive and law is prescriptive. That is, psychology tells us how people actually behave; the law tells us how people ought to behave. The primary goal of psychological science is to provide a full accurate explanation of human behavior. The primary goal of the law is to regulate human behavior, Costanzo (2004, p.9). In this regard we come to understand the discourses that may exist between these two cultures.

2.18 The change of have an influence in mental health practitioners

The 1990s have witnesses a rapid proliferation of legislative actions (court decisions) and professional guidelines from a diversity of viewpoints, many of which impinge on the practice of psychology in general, Anastasi and Urbina (1997, p.534). All too often, the combined effect of these injunctions has involved confusion, inconsistencies, and conflicts for the practitioner. Professional ethics and law resemble in their basic goals to regulate behavior. Professional codes are influenced by the legal context within which they are framed, and they may not be in conflict with the law of the relevant country. However, professional norms are often more restrictive than legal norms, Allan (2001, p.3). For example, while it is illegal for a therapist and a consenting adult client to have
sex, this is contrary to the professional rules in other countries. The law influences professional ethics. To support this, the court may decide that the standard of behavior that is generally accepted by profession is not high enough. It becomes evident that professional codes have limitations. In simple words court decisions are higher than the scope of practice for clinicians.

2.19 When healing process is tempered with

A South African newspaper, *The Mercury* (2005) reported an incidence where by a psychologist had to fight over the court's demand to release records pertaining tests results consultation notes and tests results pursuant to the psychotherapy sessions with the complaint. In this article this was stated: a court battle looming in Pietermaritzburg could have far-reaching implications for rape victim's rights to confidentiality in therapy and treatment. The Centre for the Study Violence and Reconciliation, which argues it is fundamental to counselling that rape survivors should be guaranteed confidentiality, was given high court permission in contesting a regional magistrate order compelling her to hand over documents relating to her treatment of an alleged rape survivor. The centres Lisa-Ann Mae Vetten said in court papers that the impact of the decision by regional magistrate Corrie Greyling would jeopardize rape therapy and counselling in general. The psychologist maintained that the information from therapy is confidential.

Lawyers impose an order based on their external work which fits their belief system. Disclosures based on rape incidences violate the psychologist's ethical duty to their patients and this also violates the patient's constitutional right to privacy and inherent dignity. If the therapist cannot meet the needs of the patient, the patient either remains in the same problem or worsens, Ngcobo (2005). The role of the therapist should then be able to offer the client the opportunity to begin healing and prevent harm. In order to begin the reconstructive healing, the process must invite complete honesty and safety of all individuals. Complete confidentiality could facilitate this. The healing process should be given a chance to begin, rather than stop before it has a chance to begin.
2.20 Summary of the literature review

Newton as cited in Welfel (2002, p.75) notes that our society is ambivalent about confidentiality. On the other hand, we value it and admire those who are loyal to their friends. Most democracies have enacted laws to ensure that people can trust their lawyers with their confidences, their physician with their illnesses, and their priests with their confessions. As indicated earlier, state laws also govern confidentiality between mental health professional and clients, requiring them to keep therapeutic disclosures private. It is important to note, however, that therapists are relative latecomers to this protection, and the laws are generally less complete and more weakly support for these professions than lawyers, physicians, or priests. This unwillingness to grant mental health professions the same degree of confidentiality as other professionals reflects our society's ambivalence about confidentiality.
CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

In this chapter, the epistemological framework for this study will be presented and the methodology will be outlined. The shift will also focus on an explanation of the chosen research design, namely, qualitative research and how it relates to the proposed study. This chapter hopes to achieve this by discussing various aspects of the research process for example, research design, the research instrument, reliability and validity, sampling design, interpretation of data as well as the proposed method of data analysis.

3.2 Qualitative research Paradigm

According to Terre Blanche & Durrheim (1999, p. 36), paradigms are "systems of interrelated ontological, epistemological and methodological assumptions". It is essential that the nature of the research design incorporates the nature of the research questions and the manner in which they are to be studied. Two basic research paradigms can be utilized, namely, quantitative research and qualitative research. Since the aim of this research is to capture the profound experiences of the participants, quantitative research will not be considered, and a more in-depth, holistic, qualitative approach will be utilized.

Research methodology in this study describes the researcher's method used to conduct the study and how data was collected. According to Brink (1999, p. 117) methodological studies are concerned with the development, testing and evaluation of instruments and methods used in research investigation. The goal of methodology research is to improve the reliability and validity of data collators from the views of participants. In this study the researcher used the qualitative research method because she collected information with a semi-structured instrument. Qualitative research does not try to
attempt to control the context of the research, but rather attempt to capture that context in its entirety.

Qualitative research provides a rich source of information based on experiences of participants. This perspective argues against the reductionist approach towards human experience and thus is more concerned in capturing aspects of the social world for which it is difficult to develop precise quantified measures expressed as numbers (Neuman, 2000). Human experiences are, therefore, captured from the participant’s worldview, and meaning is arrived at in terms of the researcher’s interpretations. Therefore, the role of the researcher is to play an active role, and become involved in telling the story, and thereby, the participant’s world. Researchers prefer to focus on the qualities, processes and meanings of individual differences and contexts, rather than on measurement and casual relationships.

3.3 Epistemology: Phenomenological approach

Phenomenological approach may be identified with other descriptive and qualitative approaches, but it is clearly distinguished from them by its focus on consciousness as a realm of inquiry (Polkinghorne, 1989). This approach is also known as an interpretive paradigm, (Terre Blanche, Durrheim & Painter, 2006). Phenomenological approach is descriptive and qualitative in nature. According to Englers (1985, p.279) the word phenomenology is derived from the Greek word “phenomenon” which means that which appears or shows itself. Thus, phenomenology is focused on describing the data, or the given of immediate experience. In psychology, phenomenology has emerged to mean the study of human existence and consciousness. The emphasis of the phenomenologist, therefore, is on how an object or event is perceived and understood by an individual, rather than the object or event itself.

Phenomenological research on the research describing as accurately as possible the phenomenon as it appears, rather than explaining it in a given framework (Giorgi, 1986). The phenomenological method, therefore, is concerned with the description of the
original experience of a particular phenomenon (Edwards, 2001). Phenomenology may be described as an approach in which the researcher attempts to suspend all preconceptions in order to allow the original lived experiences in reality to reveal itself. This conscious attempt to leave out assumptions, biases, prejudice and in fact everything in the natural attitude towards the world, is performed in phenomenological research in order to "perceive more clearly the pre-reflexive world in its essential forms and meanings; before describing, explicating and interpreting our experiences of the phenomenon of this pre-reflexive reality" (Edwards, 2001, p.2).

3.4 Sampling and Selection

Sampling involves the process of "selecting people, settings, events, behaviours and or social processes to observe" in a research study (Terre Blanche & Durrheim, 1999, p. 44). In a qualitative research few cases are selected, which allows for rich and detailed information to be acquired and analyzed in-depth. Furthermore, the idea is not to generalize results but rather to allow participants to share their experiences.

In this study, purposive and convenience sampling methods were employed. The purposeful selection of participants represents a key decision point in a qualitative study, Creswell (1998, p. 118). Terre Blanche & Durrheim (2006, p. 50), state that in purposive sampling cases are selected for theoretical reasons, this is, participants have experience the phenomena to be studied. With convenient sampling selecting participants is based on their availability. Participants were selected according to the following:

- Participants are Registered Students or Working Staff of the University of Zululand,
- Participants are registered with the HPCSA, and
- Participants are registered Intern Psychologists and Clinical, Counselling and Educational Psychologists.
3.5 Data Collection

3.5.1 Research Instrument

There are numerous tools available to the qualitative researcher (observation, survey or questionnaire, interviews and etc.) who wish to collect research data. For the purpose of this study the researcher chose to use a questionnaire with two open-ended questions. (See questionnaire as provided in Appendix). Questionnaires are suitable for research of this nature for various reasons: more than one respondent can be ‘interviewed’ simultaneously allowing quick and efficient collection of data, it is easy to administer and offers anonymity. With proper construction and administration the questionnaire is one of the best tools for gathering data for the researcher (Behr, 1988, p. 156).

Open-ended questions allow the participant to respond with a “wide range of possible answers” (Vadum & Rankin, 1998, p. 295). Since there are no limitations placed on the responses received by open-ended questions the researcher would be able to capture the richness of the participants’ experience as it actually appears in his or her consciousness and this varies greatly from generalised description of things independent of their experiences. The manner in which a researcher structures the questions posed to the participant is important. Emphasis should be placed on fresh experiences rather than reflective descriptions, by asking “what did you experience or feel?” Questions like this yield responses of an experiential nature (Vaille & Hallug, 1989, p. 46) and this serves the needs of this researcher.
3.6 Data Analysis

According to Rapmund (1996, p. 118), analysis of information "is the process whereby order, structure, and meaning is imposed on the mass of information that is collected in a qualitative research study". The choice of data analysis is the interpretive approach which is described by Neuman (2000, p. 71) as "the systemic analysis of socially meaningful action through the direct detailed observation of people in their natural settings in order to arrive at understandings and interpretations of how people create and maintain their social world". In other words, individuals are social beings that should be understood within the context in which they exist. The key to doing interpretive analysis is to stay close to the data, to interpret it from a position of empathic understanding. The purpose of interpretive analysis is to provide a thick description, which means a thorough description of the characteristics, processes, transactions, and contexts that constitute the phenomenon, as well as an account of the researcher's role in constructing this description, Terre Blanche et. al (2006, p. 321).

3.7 Reliability and validity in qualitative approaches

According to Brink (1999, p.124) "reliability is concerned with consistency, stability and repeatability of the informant’s accounts as well as the investigators' ability to collect and record information accurately. It further, requires that the researcher should have developed consistent responses or habits in using methods and scoring or rating its results and that factors related to subject's and testing procedures should have managed to reduced measurement errors.

Reliability and validity are concerned with the manner in which one connects constructs with measurable outcomes. However, in social constructionist theory, the concepts of reliability and validity are virtually impossible to achieve accurately and without error, since constructs with the social sciences are "ambiguous, diffused, and not directly observable" (Neuman, 2000, p. 164). If this is the case, reliability and validity should be discarded, since they are incompatible with the social constructionist perspective, in the sense that reality is embedded in context, and continuously changes and therefore,
cannot be repeated (Durrheim & Wassenaar, 1999). However, it is an ethical obligation of the qualitative researcher to assess research since it is a representation of lived experiences of people.

3.8 Ethical considerations

Ethical concerns in qualitative research revolve around the following topics informed consent, confidentiality, and competence (Neuman, 2000). In order to ensure that participants' right to privacy and confidentiality were met the following were taken into consideration:

- The participants of the current study were briefed as to the nature and need of the research verbally and also in a written form. The researcher's explanation of the proposed study was full, non-technical, and clear, so that the participants could make an informed choice with regards to their participation;
- Research participants were guaranteed that their responses would be handled with confidentiality and sensitivity, and
- Finally respondents were informed that a copy of the research document, once completed will be made available for their perusal should they wish to view it.

3.9 Conclusion

This chapter has discussed the chosen research methodology and its relevance to the present study. Thereafter, a phenomenological framework has been presented to explain the value it has in a qualitative research. In this chapter a sampling method was outlined. Data was then collected and it was indicated that a questionnaire was the instrument used in collecting data. The information obtained in this study assists in
understanding the view and experiences of participants on phenomenon at hand. The importance of research ethics was also taken into consideration. The next chapter will then look at data analysis and discuss the findings of the study.
CHAPTER 4

DATA ANALYSIS AND DISCUSSION OF RESULTS

4.1 Introduction

The purpose of this chapter is to provide the analysis of the gathered data. This chapter will also find an optimal way of interpreting the information provided by the participants. A phenomenological approach was chosen to analyze the data, with the intention of accessing accurate and clear descriptions of participants' experiences as well as their views on the concept of confidentiality. The purpose of interpretive analysis is to provide a 'thick description, which means a thorough description of the characteristics, processes, transactions, and contexts that constitute the phenomenon being studied as well as an account of the researcher's role in constructing this description, Terre Blanche at.el, (2006, p.321).

4.2 Number of participants

<table>
<thead>
<tr>
<th>Gender</th>
<th>Number of participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>3</td>
</tr>
<tr>
<td>Female</td>
<td>7</td>
</tr>
</tbody>
</table>

The table above indicates the total number of participants as according to gender. It was hoped that 16 participants will be targeted. Amongst the 10 participants 6 were registered Psychologists and 4 were Intern Psychologists. Out of the 3 male participants 2 were Registered Psychologists and one participant an Intern Psychologist. Within the female category three were Intern Psychologists and four were Registered Psychologists.
To understand the presented data two groups are formulated. Registered students become group A and registered Psychologists become group B. As stated above, a phenomenological approach is used to analyse data so to access participants’ experiences, views and feelings regarding the limits of confidentiality. Data was generated by means of a self administered questionnaire. A semi-structured questionnaire was formulated. Participants’ responses were transcribed as written by the participants and the responses of participants will be presented below. Each questionnaire was treated individually, i.e. themes were elicited from every questionnaire. Another section will then follows, which integrates common themes which are then explained and discussed.

4.3 Participants vignettes

Group A vignettes

Participant 1

Views and feelings regarding confidentiality

“Confidentiality is a controversial issue in a therapeutic relationship. Yet all psychologists are bound by their code of conduct. At some point psychologists maybe forced by certain circumstances to breach confidentiality. Of course, this is a dilemma if one is facing with such a situation in a therapeutic relationship. There are circumstances where you will be able to maintain confidentiality but on certain circumstances it is difficult. What is important about this issue is that as much as the psychologist has to consider the best interest of the client it is also important to consider and protect other parties’ interests. If the issue will harm any interested party, the confidentiality needs to be breeched no matter what, at the same time the client-therapist relation need to be maintained.”
An experience where confidentiality was to be breached

“Yes, it was a case of HIV/AIDS positive client. She was referred to me for counselling. Unfortunately, I did the inform consent form with her and I explained the issues of confidentiality and the limitations. She disclosed her status to me and told me that she did not tell her parents about it. In the process the client also wanted to commit suicide. That where the issue of confidentiality came in. I had to inform the family about the situation as the client wanted to harm herself. The family members had to know about it as she needed support from them and protection.”

It was a dilemma because the client did not understand the therapeutic process had shifted, as I had to make the client to see the importance of informing her family members about her problem. She was reluctant at first until she agreed. What assisted me here was that the client was informed of that confidentiality will be breached if the issue will harm the client or any other interested party”.

Themes elicited from participant 1

Understanding the concept of confidentiality

- Confidentiality is a controversial issue in a therapeutic relationship;
- It is a dilemma when a client does not understand the change of process;
- A client should be made to see the importance of informing family members;
- Clients might be reluctant to breach confidentiality;
- A psychologist may be forced by certain circumstances to breach confidentiality;
- Psychologists should consider the best interest of a client and of parties involved, and
- The client therapist relationship should be maintained
An instance of breach of confidentiality

- The client I saw presented with an issue of HIV/AIDS
- The client also wanted to commit suicide

Participant 2 (female)

Views and feelings regarding confidentiality

“The issue of confidentiality is a debatable dilemma. Psychologists are bound by the code of conduct and we need to apply that ethical code, on the other side we are in the middle of a dilemma because we happen to divulge confidential information. It is important to explain the degrees of confidentiality from the beginning of the session, and then the client should consent in a written form. The problem is we can get limited information from the client which is a disadvantage for a good progress and appropriate intervention. I think the psychologist code of conduct should be reviewed.”

An experience where confidentiality was to be breached

“Yes, I firstly explained the degree of confidentiality and then the mother signed a consent form on behalf of a minor. The mother insisted to mention the condition of a child is (HIV+) status in a report to the school principal. I decided to not to divulge that information but I let the mother decide whether to inform the school principal or not according to her. The child’s condition was never mentioned in a psychological report.”
Themes elicited from participant 2

Understanding the concept of confidentiality

- The issue of confidentiality is a debatable dilemma;
- Because of the binding code of conduct psychologists find themselves in a dilemma when a need to divulge confidential information arises;

An instance of breach of confidentiality

- A HIV Positive child;
- It is important to explain the degree of confidentiality from the beginning of the session;
- A consent form should be completed by a guardian;
- Limited information is given by a client when consent is signed, and
- Limited information from clients could be a disadvantage for a good progress and appropriate intervention

Participant 3 (female)

Views and feelings regarding confidentiality

"My view is that confidentiality is not absolute. As an intern clinical psychologist I am required to undergo supervision on all the cases that I take on. This means that at some level even if I tell the people who come for consultation that I am still under supervision as an intern, this may prohibit other people to be totally open to a therapeutic relationship. I feel that to certain extent it could affect the therapeutic relationship negatively or affect the therapeutic relationship negatively or positively. Regardless of the negatives confidentiality might have on our profession, the mere fact that clients are
informed of it and its consequences protects the clinician as well as the consulting client and empowers them to choose to undertake a therapeutic treatment or not.”

An experience where confidentiality was to be breached

“Yes, I have experienced a situation in which confidentiality was breached. I took the situation to supervisor who helped me confront the person who breeched the confidentiality as my patient threatened suicide as felt unfairly treated by the whole department of psychology in my university. I needed to protect my client as it is my duty to do no harm and that everything I do as a clinician is to take the benefit of the client. As the case was a sensitive case I had to write a statement of incidence that led to breach of confidentiality to the supervisor and the supervisor took the matter further to the board of senior psychologist, who consulted the student that breeched confidence to confess. To cut the long story short, the consequences were terrible but my conscience was clear. I had to sit with a group of people in my class who blamed me for the consequences, but I had no idea of what happened and how.”

Themes elicited from participant 3

Understanding the concept of confidentiality

• Confidentiality is not absolute;
• Interns are required to go through supervision on all cases;
• When people are informed that one is under supervision they may not open to a therapeutic relationship;
• Informing clients of limitations on confidentiality protects the clinician and clients and empowers them to choose to undertake a therapeutic relationship;
• Suicide clients may feel unfairly treated when confidentiality is breached, and
• Feelings of guilt may arise from the therapist when confidentiality is breached.

An instance of breach of confidentiality

The dilemma encountered by participant 4 was when confidentiality of her client was breached by a colleague. Her dilemma was whether to do no harm to her client or protect her colleague. According to her, her client comes first.

Participant 4 (male)

Views and feelings regarding confidentiality

"As interns we professionally breach confidentiality through supervision. However there are cases where by sticking to confidentiality places others in danger e.g. HIV/AIDS, delusional disorders etc. I do comprehend the rationale behind confidentiality and as social scientists, but should the situation compel for breach of confidentiality that should be done cautiously and constructively."

An experience where confidentiality was to be breached

"No, I have not experienced a dilemma of that nature. Of course with the confidence that I have on my judgement, I would breach confidentiality I the most appropriate way."
Themes elicited from participant 4

- Interns professionally breach confidentiality through supervision;
- There are cases where by sticking to confidentiality places others in danger, for example, HIV/AIDS and delusional disorders, and
- The rationale behind confidentiality is understood and should be maintained.

An instance of breach of confidentiality

- There was no direct first hand experience by participant 5 but would breach confidentiality using his judgement, and
- If confidentiality is breached it should be done cautiously and constructively.

Group B Registered Psychologists

Participant 5
Views and feelings regarding confidentiality

"The need to maintain confidentiality is a vitally important part of the therapeutic relationship as is places the client at ease and allows them o express their feelings in a contained, safe, therapeutic environment. Without confidentiality clients would or might not feel comfortable in disclosing such personal information ad therapeutic process might only be undertaken at a 'surface level' and not where the experience is trapped in deep conscious can be deal with. However, the need to break confidentiality is important in certain circumstances when people's lives are at risk or harm of others might result. Psychology is also a community intervention in these circumstances the general public and others need to be protected."
An experience where confidentiality was to be breached

“Yes, I have had to contact various services and parties and disclose information and the situation has been concerned. The client wanted to harm the partner and other people. I had also had to report sexual abuse of a minor when I had to disclose the have been abused. These cases were reported to the South African Police Services (SAPS). In both cases disclosure as discussed with both clients.”

Themes elicited

Understanding the concept of confidentiality

• The need to maintain confidentiality is a vitally important part of the therapeutic relationship and places a client at ease;
• This allows them to disclose and express their feelings in a safe contained environment;
• Without confidentiality clients may not feel comfortable to disclose personal information;
• The therapeutic process might be at a surface level and not where the experience is trapped in the deep conscious;
• The need to break confidentiality is important in certain circumstances when people’s life is at risk, and
• The general public and other need to be protected.

An instance of breach of confidentiality

• Where a sexual partner was at risk and
• Where a minor was sexually abused.
Participant 6

Views and feelings regarding confidentiality

"Theoretically, there has never been a problem as the situations in which a psychologist is bound to breach confidentiality are reasonable. Practically in all my twelve years as a psychologist I have never been faced with such a situation; i.e. I have never suffered this ethical dilemma."

An experience where confidentiality was to be breached
No!

Themes elicited participant 6

Understanding the concept of confidentiality

- Theoretical confidentiality is not a problem and sounds reasonable.

An instance of breach of confidentiality

- There was no direct experience of breach of confidentiality.

Participant 7

Views and feelings regarding confidentiality

"I feel that it defeats the very purpose of psychotherapy “confidentiality talking cure” if you take away the confidentiality. This means one may end up harming the patient thus
breaking the benevolent clause. It makes me no different from anybody else the client may decide to talk to. It may restrict the level of expressiveness in a patient and therefore hamper the therapeutic process because he/she may withhold some information after being told about limited confidentiality. It makes me personally angry because the attorneys still retain the privilege yet we are forced to divulge information. However, there are instances e.g. when the patient is a danger to self and others and it is for his protection."

An experience where confidentiality was to be breached

“Yes, I usually consult two or more colleagues to seek advice and then make a note of what we agree on, in the files of patients concerned.”

Themes elicited

Understanding the concept of confidentiality

- Taking away of confidentiality defeats the whole purpose of psychotherapy “confidential talking cure”;
- It may restrict the level of expressiveness in a patient thus hampering the therapeutic process;
- Patients may withhold some information after being told about limited confidentiality;
- The participant feels angry attorneys still retain the privilege yet we are forced to divulge the information, and
- There are instances when it is necessary for example, when the patient is in danger to self and others.
An instance of breach of confidentiality

- Dealing with situations that elicit a dilemma in therapy I consult two or more colleagues, and then write notes in files of patients concerned.

Participant 8

Views and feelings regarding confidentiality

"It puts me in a real dilemma because I find myself torn between the interests of the client and the binding legal obligations. Although it sometimes becomes difficult to take either decision, I feel it is good that there is guiding ethical codes I simply do the right thing i.e. to breach confidentiality whenever the situation demands but I try to be in line with the ethical conduct. It is difficult though to find oneself having to resolve a dilemma. At some stage I feel bad as if I doing the wrong thing but there was a pressing need with some sense of urgency to take action as soon as possible. Breaching confidentiality has never left anyone with good feelings, I mean personally or at a personal level. It is the most difficult aspect one has to deal with in a therapeutic relationship. It is like taking a risk with no guarantee that it will work towards desired solution."

An experience where confidentiality was to be breached

"The situation I experienced was that of keeping or breaking the client's confidence. The client withheld some information which could endanger the life of the partner. It was a dilemma in the sense that there was no straight forward action that was immediately apparent. It was either to safeguard the confidentiality of the client disclosure or break the confidence because keeping it would potentially endanger the life of the partner. It was not clear how to, and when to do it. To resolve the dilemma I consulted other senior therapists for objective opinion. It seemed like the ethical principles of beneficence and nonmaleficence were at stake. With the assistance of other experienced therapists, I
reviewed the relevant ethical guidelines and explored the practical alternatives and ultimately I breached the client's confidentiality, yet I tried not to harm the client by preparing her for the breach. It was breach because it was against her will to disclose to the partner the inherent danger. There was only one way of resolving the dilemma, that was taking a decision as to what to do, how and when, thinking along the lines of right approach, right time, right words bearing in mind not to harm the client either when protecting the partner."

Themes elicited

Understanding the concept of confidentiality

- Leaves one in a real dilemma;
- There is a conflict of interests of a client and of legal obligations;
- Feelings of guilt may arise when confidentiality is breached;
- It is difficult to make a decision;
- Breaching confidentiality never leaves anyone feeling good at a personal level, and
- Taking a risk with no guarantee towards a desired solution.

Instance of breach of confidentiality

- Client withheld some information that could endanger a life of a partner;
- It is difficult to choose between disclosing or breaching confidentiality;
- To resolve the matter I consulted senior therapists, and
- There was a conflict of ethical principles of maleficence and beneficence.
Participant 9

Views and feelings regarding confidentiality

"Very worrying but at the same time I am aware of how necessary this conflicting stance is. If someone is suicidal or homicidal it is absolutely unavoidable breaching confidentiality. What worries me is when a psychologist is compelled, by law to breach confidentiality. It leaves us powerless and the client vulnerable. How it possible is that someone with a legal background has more insight into what is best (all around) for someone in therapeutic relationship."

An experience where confidentiality was to be breached

No!

Themes elicited

Understanding the concept of confidentiality

- Confidentiality is a conflicting stance;
- Feels a sense of being compelled by law to breach confidentiality, and
- This leaves the psychologists powerless and vulnerable.

An instance of breach of confidentiality

"No direct first hand experience of this ethical dilemma."
Participant 10

Views and feelings regarding confidentiality

"If there is a client or someone in danger confidentiality has to be negotiated with the client and it becomes relative instead of being guaranteed. I feel strongly that it should be maintained in that way or the protection of both the client and the society."

An experience where confidentiality was breached

"Yes! Factors were discussed with the client and eventually confidentiality had to be released for the benefit of improving the situation."

Themes elicited

- If there is someone in danger confidentiality should be negotiated and
- When confidentiality is negotiated with the client it becomes relative instead of being guaranteed.

An instance of breach of confidentiality

- Factors should be discussed with the patient before breach of confidentiality and
- If it is maintained in this manner it protects the client.
4.4 Discussion of findings

4.4.1 Emergent themes

This section looks at common themes that were extracted from participant’s vignettes in respect of their views and experiences on the concept of confidentiality. These themes constitute the discussion that follows. The researcher used the phenomenological framework to analyze the responses from the vignettes. This process resulted in a qualitative description of the participants' experiences and views of the concept of confidentiality in a therapeutic relationship.

- Confidentiality is not absolute

Confidentiality information was defined in chapter two as any information conveyed in confidence to a psychologist by a client. In other words this definition states the importance of secrecy. However, the above does not promise a client that everything discussed in a therapeutic space will remain confidential. This current study indicated that when clients know that their information can at some point work negatively on them they are likely to pull back in therapy. Confidentiality seems to be just a term but in practicality does not stand for what it promises.

- Level of expressiveness is limited

The foundational history of psychotherapy is based on the notion that clients should feel safe in a therapeutic environment. This person requires space in which to become totally vulnerable. It is only in the safe therapeutic environment that he/she can expose and express the dark side of the self without fear of judgement. Research has shown that clients expect psychologists to maintain absolute confidentiality as a general rule (Miller and Thelen, 1986). However, this seems not to be possible in a therapeutic space where by ‘secret’ information said in therapy can be publicised. Participants believed strongly that when clients are told of the degrees of confidentiality they might be reluctant to share and express everything in therapy. It was also indicated that when
confidentiality is not absolute this defeats the whole purpose of being in therapy.

There is a strong possibility that clients will tell what they consider safe for them instead of telling the truth. It is only when confidentiality is absolute that clients can express themselves completely without being judged and feels that they are acceptable. If this is not provided the client may question the relationship because it is based on conditions. This might seem as a difficulty faced by clients only but the current study showed that psychologists also experience the conflict when they have to choose appropriate intervention strategies. The participants felt that when clients do not tell their real stories it becomes a difficulty to intervene properly. Failing to choose the right intervention might perpetuate the presenting problem brought by the client.

- During supervision confidentiality is breached

Professional supervision for intern psychologist is one of the important training tools in a therapeutic environment. Standard 23, of the professional board of psychologists’ (2004) states that a supervisee shall full inform a client receiving psychological services of his or her status as a supervisee and the rights of the client to confer wit supervising psychologist with regard to any aspect of the psychological services being performed. It was interesting to note that student psychologists felt that when they inform their clients of this status clients are likely to withdraw from therapy or question their competence. Being in supervision was seen as another form of breaching confidentiality. However it was also found in the present study that informing clients of the limits of confidentiality can empower them to choose to be in therapy.
• In exceptional cases confidentiality can be breached

Even though the concept of confidentiality brings about ambivalent feelings in a therapeutic relationship it was of note that students and registered Psychologists believed that there are certain cases whereby confidentiality can be breached. The responses of participants indicated that when a need to breach confidentiality arises it should be done in a constructive way putting first the client. It was felt that when confidentiality is breached there is always a conflict of interest that is experienced by both student and registered psychologists. Though the participants agreed that if a client poses a danger to the self and or others confidentiality should be breached with discussing this first with the client in simple words do no harm to the client (nonmaleficence). For example, the following problems were seen as exceptional cases:

- HIV/AIDS cases
- Cases involving minors
- Cases where the law system is involved, these will be discussed below.

HIV/AIDS related issues

HIV/AIDS issues are likely to involve third parties. It was indicated from the present study that even when clients have been informed about the degrees of confidentiality they are likely to be reluctant to inform their partners of their status. It was of significance to mention that participants felt that breaching confidentiality without the consent of their clients leaves them with the sense of guilt. Informing third parties should be done in a constructive and a sensitive manner. Knapp and Vandercreek (1993) noted that some states in United States of America (USA) have instituted partner notification programmes. They suggest that if clients are reluctant to tell their partners of their HIV status, psychologists should consider using the partner notification programmes instead of warning the intended victim. The idea of nonmaleficence is articulated in the HPCSA Standard 26 (2004). Psychologists take reasonable steps to
avoid harming their clients and others whom they work with. Do no harm principle is generally held to be the stronger requirement than beneficence (Anderson and Barret, 2001). There was a strong concern from the participants that there is no clear guidelines to how can therapist assess danger from their clients and third parties when confidentiality is released. In keeping with these findings DiMacro and Zoline (2004) found that 67% of psychologists who considered breaching confidentiality rated the degree of risk that the client presented to their unsuspecting spouse as significant in the decision of breaching confidentiality. The argument raised here by the participants is that there should be a constructive way formulated to breach confidentiality.

Cases involving minors

Dealing with children when a confidentiality issue arises is one of the themes that emerged. When working with children it is unavoidable to involve a third party, this can be a parent, guardian, school and others. One of the concerns that arose in this study was a case whereby a parent decided to inform a school principal about her child’s HIV status. The participant indicated that her first priority was to protect the child (client) from a decision taken by the parent. For the psychologists to avoid harming the client she wrote a psychological report without including the child’s status. There was also different scenario indicated by participants of reporting a case to the police when as a psychologist suspected child abuse. Here confidentiality was breached in respect of the child’s protection.
When the law system forces breach of confidentiality

According to law, the psychologist's general duty of confidentiality must give away when disclosure is necessary to warn or prevent harm to an identifiable third party. There are several cases whereby psychologists are obliged to divulge confidential information in therapy. Disclosure of such information does not only jeopardise a therapeutic relationship but may also subject the therapist to liability for invasion of privacy, defamation or breach of confidentiality. A registered psychologist articulated her views as follows, "it makes me personally angry because the attorneys still retain the privilege yet we are forced to divulge the information." Another participant responded in this manner, what worries me is when a psychologist is compelled by law to breach confidentiality. It leaves us powerless and the client vulnerable." Considering the above concerns raised by the participants it is understood that training or registered psychologists feel that their power to protect the people they see for therapy is not guaranteed. If the law can interfere with what happens in a safe space this leaves the client vulnerable to the decisions of the law. This means that the psychologist loses power when the law interferes with what happens in therapy.

It is an area of concern that the legal suits will force the therapist to breach confidentiality when the client is perceived to be dangerous to himself or herself and or others. Here 'dangerousness' has not been clearly defined and seem to encompass any criminal act. Taking into account the considerable difficulties in predicting dangerousness, it is likely that in many cases the client may not really carry out the intention expressed in therapy and, in such cases, the loss of trust in the therapeutic relationship may lead to the client terminating a potentially beneficial therapeutic alliance. In view of the latter, it is argued that while ethical codes attempt to act as guidelines for psychologists, they can both be abstract and imprecise as they are unable to approach issues that are contemporary and are at the cutting edge of the profession (Welfel and Kitchener, 1992).
A conflict of interests

There are times whereby psychologists experience a conflict of interest between their obligation to the people they serve (clients) and an obligation to third parties (employer, parents, partners, and etc). The participants in this study recognised that whenever there is an ethical dilemma (confidentiality) they always find themselves in this conflict. The conflict of interest comes when a psychologist has to choose who to serve, the client or the parties involved. This dilemma is evident with the known Tarosoff case which was discussed in chapter two. The majority decision in the Tarosoff case argued that there was a duty to protect others based on the social good that came from taking steps to protect the victim against the harm that arose from breaking confidentiality (Anderson & Barret, 2001). Bersoff (1999), suggests that if a decision is made to breach confidentiality in order to warn a third party, the client should be informed before hand. Bersoff (ibid) continues to states that informing clients may help minimise the harm to both the client and the therapeutic relationship. From the results obtained in this study it was of significance to note that both intern and registered psychologists prefer negotiating with their clients before breaching the confidentiality. This showed that in a therapeutic situation the primary responsibility of psychologists is their clients.

4.5 Significant common discourses

4.5.1 Power dynamics

During the analysis of data of this present study the researcher noted that there are three power dynamics that were at play here.
4.5.2 Client- psychologist relationship

It is understood that when clients enter therapy they engaging themselves in a therapeutic relationship. This relationship is then governed by certain rules and boundaries. A therapeutic relationship might be seen by clients as an empowering one. However, in this present study it was indicated that once clients know that the relationship they enter into is based on conditions they are likely to withdraw from such a relationship. What makes a therapeutic relationship meaningful to clients is the fact that what they discuss with their psychologists will remain private. The client’s sense of being empowered is likely to fall away when confidentiality is removed. There was a strong indication from this study that clients do lose trust from their therapists if confidentiality is not absolute. It was interesting to note that confidentiality is a term without difficulty at a theoretical level, however problematic at a practical level. This brings about a discourse in this term because it does not give what it promises. It was also interesting to note that in a client-psychologist relationship there is language dynamism that comes to play when clients consent for therapy. For example one participant suggested that confidentiality should rather be negotiated with a client so it becomes relative instead of being guaranteed. This indicated a discourse of language in a therapeutic relationship. Psychologists will then strive to construct an environment that sounds safe for their clients.

4.5.3 Supervisor –intern relationship

It has been said that supervision is one of the essential methods in psychology to maintain growth in prospective psychologists. Intern psychologists are no exception from the former. It was indicated from the data obtained from this study that informing clients that you are still under supervision may temper with a therapeutic relationship. In simple terms this suggests that confidentiality of clients is already limited between the intern psychologist and the client. Most participants felt that mentioning degrees of confidentiality while under supervision makes one appear incompetent. Sharing confidential material with one’s supervisor may cause clients not to be at ease with a therapist’s interventions.
4.5.4 Legal fraternity and psychological fraternity

A widely expected tenet of psychotherapy is the importance of trust between the client and the psychologist. The client expects that whatever communicated in therapy remains confidential unless explicit permission to communicate confidential information to others is provided by him or her (Baird, Laing, & Rupert, 1987). This means no information shall be given to third parties unless the client is willing to do so. This may not be realistic in psychology. There are instances whereby a psychologist may be called into a court of law to divulge private information to the legal system without the consent of the client involved.

The psychologists' view on this issue in this study suggested that there is a misunderstanding between the psychologists and the legal system. The misunderstanding is based on the definition of the term of confidentiality. This seems to be raising a discourse in the concept of confidentiality. According to the law, psychologist's general duty of confidentiality must give way when disclosure is necessary to warn or prevent harm to an identifiable third party. "This is a conflicting stance" said one of the participants.

Another participant mentioned that she feels angry because lawyers still retain the power to privilege information. This raises a discourse because lawyers and psychologists are responsible to their clients and it is their duty respectively to protect people who have faith in them. There seems to have a difference between confidentiality and privilege communication. The term confidentiality deals with the prevention of voluntary disclosure of inappropriate material by a psychologist, the term privilege refers to the rules for preventing involuntary disclosures requested by legal authorities (Roback, Ochoa, Bloch, & Purdon, 1992). It is important to note that when the court subpoenas a psychologist, they might lose the power to protect their clients. Ngcobo (2005) asserts that such a dilemma occurs because of the conflict that tends to result when legal, moral, personal, and professional responsibilities clash in a fiduciary
relationship between the psychologist and client. He also felt that professional codes are limited by the fact that they are written within general views which are then applied universally. This was consistent with the findings from this study that psychologists do acknowledge that the ethical code is not clear when it comes to the protection of the client when the law is involved.

4.6 Conclusion

Chapter four has given an in-depth understanding of data that was collected in chapter three. The stories of participants have been retold in the form of vignettes. Common emerging themes have been extracted from the collected data. Participants' views and experience on the concept of confidentiality suggest that the decision to breach client confidentiality presents a serious ethical dilemma in the practice of psychology. This leads to a discourse nature that comes into play when clients enter into a therapeutic relationship. While psychologists expressed that they can breach confidentiality in exceptional cases, they still feel that confidentiality is an essential tool to facilitate therapy. There seems to be a strong sense that there is no clear guide for psychologists to assess the inherent danger that clients present with and also the third parties involved.
CHAPTER 5

LIMITATIONS OF THE STUDY AND RECOMMENDATIONS

5.1 Introduction

The focus of this chapter is to draw conclusions on the study and to present the limitations that were encountered when conducting the study and also look at what the researcher recommends for future research.

5.2 Conclusion

A therapeutic relationship, unlike any other relationship that one can enter into is based on the client trusting the psychologist. It has been stated that traditionally clients expect their psychologists to maintain what they share with them in therapy. The expectation of clients cannot not be guaranteed, certain circumstances can lead to breach of confidentiality. The researcher was motivated to research on this current study of confidentiality due to ethical dilemmas that are likely to arise in a therapeutic relationship. It was also of interest to find out whether therapy is effective when confidentiality is guaranteed. From the findings of this study psychologists in any practicing field believe that a client’s best interest should be maintained. In this regard it was, however, not denied that there are exceptional cases whereby confidentiality can be breached. Exceptional cases for example, included issues relating to HIV/AIDS, cases that involve minors and cases where the law forces the psychologist to breach confidentiality. In some of the findings that emerged in the present study is that breach of confidentiality should not be impose to clients but rather discussed with them.
5.2 Limitations of the study

There are two facets that were established to have been the limitations of the study thus the results received cannot be over generalised to the population of psychologists. These factors are the small sample and the research instrument. Qualitative research unlike quantitative research methods can use a small sample of the population investigated. The participants can be from five and above. The sample size was only limited to the population of University of Zululand, thus this was the limitation of the study. The researcher hoped to have at least 16 participants. It was hoped that with such a number more possible views on the concept of confidentiality could be elicited. The research instrument was also identified as limited in terms of collection of data. Questionnaires are good instruments for data collection. However, the researcher felt that more research methods, for example, interviews could have been used to validate the data obtained.

5.3 Recommendations

Confidentiality seems to a term that raises ambivalent feelings both from a psychologists and a client point of view. From the results obtained from this present study suggests that there is a limitation on psychologists professional code when ethical dilemmas come into play. It is then recommended that future research look on the perceptions of people who are in therapy when confidentiality is breached. This may encourage that the ethical code of psychologists be reviewed and this may include a clause that protects client- psychologist relationship when confidentiality is breached.
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APPENDIX: QUESTIONNAIRE

University of Zululand  
P.O.BOX 1001  
KwaDlangezwa  
3886  

Dear Colleague  

A study on views of Intern Psychologists and Registered Psychologists on the concept of Confidentiality at the University of Zululand  

The attached questionnaire forms part of a research study in respect of a Masters degree in Clinical Psychology. It is hoped that the information obtained will contribute to our understanding of whether effective therapy is governed by the best interest of the client or by the rulings of the legal system.  

Your participation in this study is voluntary. I would, however, appreciate if you would complete the attached questionnaire. The questionnaire should not take longer than 15 minutes. Your participation is completely anonymous and confidential.  

Your participation in this study is highly appreciated.  

Thank You  
Yours sincerely  
C.P. Zungu (Clinical Masters Student)  

Supervised by  
Prof. H.S.B. Ngcobo
"I understand the nature and purpose of this study and participate freely and voluntarily. I understand that by completing the questionnaire below I indicate my consent."

**Questionnaire:**

**Biographical Details**

Gender __________________

Age ________________

HPCSA Registration Category ____________________________

Psychologist Code of Conduct binds all Psychologists to maintain confidentiality in their therapeutic relationships. However, at some point Psychologists may need to breach that Confidentiality. In line with the above statement, what are your views and feelings regarding the dilemma that you as a Psychologist face in a therapeutic relationship?

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Have you ever experienced a situation in which you were faced with such a dilemma and how did you come to resolve the dilemma?