

Liability & Confidentiality in Counseling

On Liability

Definition: The state of being responsible for something, especially by law.

Liability Risks in Church-based Counseling¹

- *Negligent counseling and/or reporting* — Includes failures 1) to refer to medical professional intent to commit suicide, 2) to report suspicion or disclosure of child abuse and/or elder abuse, and 3) to report disclosure of intended violence towards another.
- *Seduction or sexual misconduct of counselees*
- *False accusations from counselees*
- *Breach of confidentiality* — Includes intentional or inadvertent breaches
- *Negligent “hiring”* — Includes a failure to adequately screen new counselors
- *Negligent supervision* — Includes a failure to adequately supervise & train counselors
- *Lack of insurance coverage*

Policies for Minimizing Liability

As a ministry of Gospel City Church, we should seek to minimize liability to protect the church body and counselors from litigation and to protect counselees from intended or inadvertent harm. Doing so is a proactive and practical extension of God’s love to others.

Below are ways the Biblical Soul Care ministry seeks to love and protect by minimizing liability.

- Growth in personal holiness (Col 3:5-6, 12-14; Eph 4:22-24; Titus 2:11-12)
- Ongoing formal & informal training
- Men counsel men. Women counsel women. Advocates for every counselee.
- Counsel in church offices with glass walls/doors.
- Counselee must sign all three intake forms — PDI, Consent to Counsel, & Consent to Advocacy — prior to the 1st counseling session.
- Counselor to inform counselee that we are not state-licensed, professional counselors during 1st session. Instead, each counselor functions under the authority of Gospel City Church, its doctrines, theological persuasions, bylaws, & standard operating procedures.
- Counselor to inform counselee that we practice “limited confidentiality,” not “absolute confidentiality” during the 1st counseling session.
- Counselors to understand and follow the Confidentiality Policy.
- Counselor to protect handwritten case notes.
- BSC leadership to maintain proper screening procedures for prospective counselors.
- BSC leadership to provide adequate counselor supervision.
- Gospel City to maintain the proper level of liability insurance.

¹ Church & Tax Law, *Church Legal Liability*,

<https://www.churchlawandtax.com/pastor-church-law/church-legal-liability/counseling-in-general/#:~:text=A%20church%20also%20may%20be.church%20members%20by%20a%20minister.>

On Confidentiality²

Guiding Verses: Proverbs 11:13, Proverbs 20:19

Confidentiality is God-honoring.

Confidentiality is about trust (positive) and gossip (negative).

Confidentiality is about loving our counselees well.

Confidentiality creates an atmosphere of honesty that enables wise counsel (Prov 18:13).

Confidentiality builds relationship and suggests honesty, care, and compassion.

Limited Confidentiality! — Not Absolute Confidentiality

While confidentiality in counseling is important, BSC counselors are held to limited confidentiality, not absolute confidentiality. Meaning — there are a few actions that counselors must be able to take where the confidentiality commitment does not apply.

Below are seven exemptions to BSC's commitment to confidentiality.

To seek advice from other counselors

No counselor is all-wise or all-knowing. Counselors need the freedom to ask other counselors or professionals for advice. Counselors should limit the amount of personal information shared to only what is required to receive wise advice. Also, any personal information shared with other counselors or professionals shall not be shared further.

- First Points of Contact — Jon Seger, Michelle Helmkamp

To seek advice from an attorney

In the event that a situation requires the advice of an attorney, counselors need the freedom to contact a trusted attorney. Any personal information shared with that attorney is protected under attorney-client privilege and shall not be shared further.

- Brett Hummer (Gospel City member) is currently on retainer by Gospel City. If you have a situation that requires attorney input, contact Jon Seger to explain the situation, and then we will contact Brett together.

To comply with a court order

Though not common, counselors must break confidentiality if subpoenaed or ordered by the court directing the disclosure of information.

- Follow the same steps as #2 above.

To accommodate mandatory reporting

Counselors cannot hold in confidence what the governing authorities require us to share. The state of Indiana mandates everyone to report child abuse. And even though not mandated in Indiana, it is recommended to also report elder abuse.

- DCS 24-hr Hotline: 1-800-800-5556
- Local Law Enforcement: 911

² Adapted from Gospel City Biblical Soul Care's current confidentiality policy as well as chapter 20 of *The Gospel for Disordered Lives* by Robert Jones, Rob Green, and Kristin Kellen

- Mandatory Reporting Training: <https://mr.dcfstraining.org/UserAuth/Login>
- Mandatory Reporting Steps: Appendix 01 of [BSC Standard Operating Procedure](#)
- Mandatory Reporting [PDF](#)

To address suicidal intentions

Counselors are required to break confidentiality if a counselee states an intent to commit suicide. Limiting confidentiality to protect a person from self-harm is ultimately more loving than keeping quiet and learning a counselee took their own life.

- National Suicide Prevention Lifeline: 988 (or 800-273-8255)
- Local Law Enforcement: 911
- Reference Counseling the Suicidal [PDF](#)

To report crime as necessary

If a counselee states they plan to physically harm another person, counselors should break confidentiality to call law enforcement and follow their direction.

- Local Law Enforcement: 911
- Nate Bachman (Gospel City member) is a local law enforcement officer and Gospel City's 1st point of contact for any law enforcement related inquiries.
- If you have a situation that requires law enforcement input, contact Jon Seger to explain the situation, and we will contact Nate together.

To communicate with Gospel City pastors/elders

If counseling fails due to the counselee's ongoing, unrepentant sin, counselors must break confidentiality to communicate with Gospel City pastors/elders (or the pastors/elders of the counselee's local church). The pastors/elders will then decide whether to move forward with steps of restorative church discipline (Mat 18:15-17; 1 Cor 5:1-13).

- If you have a situation that requires pastor/elder input, contact Jon Seger to explain the situation, who will then take the information to the pastors/elders for potential next steps.

Stated more simply... The only time counselors break confidentiality is —

- To seek advice — informal or formal.
- To comply with court orders.
- To protect the vulnerable, the counselee, or others.
- To involve leadership for potential church discipline.

If required to break confidentiality, counselors should proactively communicate to the counselee what information he/she plans to share, with whom, and for what reason.

The only other time counselors may share confidential information is when given permission by the counselee. Written approval from the counselee is required before sharing.