



### **LIMITS OF CONFIDENTIALITY**

1. **With proper legal consent the Tennessee Colleague Assistance Foundation (TCAF) may release confidential information.**
2. **TCAF may release confidential information without consent when the following conditions are met:**
  - a. **When a member of TCAF program has reason to suspect that a client (or potential client) meets the standards of TCA: 37-1-401 or TCA: 71-6-103 (i.e., the Tennessee Child Abuse and Elder Abuse statutes), TCAF will make a report to the appropriate authority.**
  - b. **When a client (or potential client) of TCAF makes a believable threat of bodily harm to self and/or to a third party, TCAF will take steps consistent with TCA: 33-3-206 to protect the individual or third party in a manner that is consistent with the standards of Tarasoff<sup>1</sup> and its legal progeny.**

TCAF will **NOT** make a report to the Health Related Boards of the Tennessee Department of Public Health (i.e., Board of Examiners in Psychology, hereinafter referred to as the “BOE”), **UNLESS:**

1. the TCAF client (or potential client) represents a **significant risk of substantial harm to the health and safety of the public** (hereinafter referred to as being a “Public Threat”, as defined below), AND
2. the Public Threat arises from the client’s (or potential client’s) **inability or unwillingness to safely perform the Essential Functions of his/her license**, as determined by the definitions, procedures, and conditions outlined below.

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<sup>1</sup> This policy is guided by the principles established by the California Supreme Court in the case of Tarasoff vs. Board of Regents State of California and its legal progeny. The procedures of this policy conform to TCA 33-10-302, which provides immunity from liability.

## I. Definitions

**Significant risk of substantial harm to the health and safety of the public** (or “Public Threat”) shall mean and refer to:

1. a psychology professional’s<sup>2</sup> behavior, or the lack of behavior (e.g., negligence), AND
2. the behavior/negligence is more likely than not likely to place members of the public at significant risk of substantial harm, AND
3. the professional behavior/negligence is more likely to occur than not occur.

**Significant risk** is determined by considering both the probability of occurrence and the severity of the consequence should the behavior/negligence occur. In determining whether an individual poses a Public Threat, the factors to be considered include: a) the nature and severity of the behavior/negligence of the licensee, b) the imminence of the potential harm, c) the duration of the risk, d) the nature and severity of the potential harm, and e) the likelihood that the potential harm will occur. Determining significant risk is based on professional judgment, as defined below. Specifically, the threshold for determining that a significant risk exists is based on a professional judgment that considers the severity of the consequences of the potential behavior and the probability or likelihood of the occurrence. As the potential harm increases, the probability of occurrence is given less weight in determining the significance of the risk.

**Substantial harm** refers to the physical safety/harm to an individual and others, as defined in part by TCA: 37-1-401 (which defines abuse of children) and TCA: 71-6-120 (which defines abuse of elders). However, the determination of physical safety/harm to an individual is not limited to these criteria, circumstances, ages, or other conditions, alone.

**Essential Functions** regarding the scope of practice for the profession of Psychology are defined in Chapter 63 of the Tennessee Code, and the Rules and Regulations of the BOE in Psychology. The essential functions of the practice of a psychology professional shall mean and refer to the fundamental, essential duties and professional responsibilities of the professional’s role and function, as distinguished from the marginal duties of that license and the position the licensee holds. Tennessee Laws, and the Rules and Regulations of the BOE define, in part, the functions of a psychology professional. Also, for the purposes of this assessment, a function is considered to be essential if the particular psychology professional’s role, responsibility, and job position exists for the purpose of performing that function, and/or if the function is highly specialized

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<sup>2</sup> The term “psychology professional” includes Psychologists, Senior Psychological Examiners, Psychological Examiners, Psychological Assistants, those holding temporary or provisional licenses, and those making application for a license from the BOE in Psychology.

and the person has been licensed and/or hired for his or her expertise or ability in performing that function. By contrast, a marginal duty is one that can be eliminated, modified or reassigned without changing the fundamental nature of the psychology professional's duties or job responsibilities.

## II. Professional Judgment and the Decision Making Process

### Evaluation to determine factors of risk and public harm

When feasible, determination that an individual poses a Public Threat shall be based on a comprehensive psychological evaluation of the psychology professional's ability to safely perform the *Essential Functions* of his/her job, and the likelihood that such an impairment poses a significant risk of causing substantial harm to the health and safety of the public. When possible, this comprehensive psychological evaluation is to be performed by an institution or agency competent and/or recognized in the field as being competent to assess professional impairment.

If a comprehensive evaluation is not feasible, TCAF may render a determination based on the available evidence. TCAF's determination of significant risk of substantial harm to the health and safety of the public will be based on TCAF staff's assessment. Individuals making the assessment will use reasonable professional skill, knowledge, care and judgment that is ordinarily possessed and exercised by those possessing a license from the BOE in Psychology. Individuals making the assessment will rely on the most current psychological knowledge and/or the best available objective evidence, and employ principles utilized by one's professional specialty under similar circumstances.

Except for emergency circumstances, a committee of at least three TCAF staff members will make the determination that a report should be made to the BOE. This committee of TCAF will consist of at least one member of the TCAF Board of Directors, the TCAF Director of Services, and one Associate Director of Services. Input from other TCAF staff may also be considered by the committee. The decision to make such a report will be based on the majority vote of the members of the committee. The report will be submitted to the Board of Healing Arts by the committee member that is a representative of the TCAF Board of Directors.

In the case of an emergency, (e.g., when there is imminent danger of significant harm and time does not afford an opportunity to consult with TCAF leadership), the TCAF member will discharge his statutory and fiduciary duties to protect others.

### Limits of Confidentiality Summary

TCAF may make a report to the BOE when:

1. there is a **significant risk of substantial harm to the health and safety of the public, AND**

2. the significant risk of substantial harm is related to the psychology professional's **inability or unwillingness to safely perform the essential functions of his/her professional role.**

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