

### Overview

We have a moral responsibility to protect research participants from harm.

**State Licensing Boards** – baseline requirements for course work, field placement hours, supervision, formal mechanism of redress for ethical violations

Reporting Requirements in ethics codes may not align with state laws or regulations

When therapist extend the boundaries of their practices, or when they branch out onto an area requiring specialty competence, they should seek consultation with a competent practitioner

Those who are responsible for educating and training mental health professionals are ethically and professionally obligated to balance their roles as advocate and mentor of trainees with their gatekeeping role

**Training Standards** (CACREP- Council for Accreditation of Counseling and Related Education Programs) – course work, content of courses, hours

Professional codes of ethics become yardsticks to judge appropriate behavior.

When a practitioner has a license they are not competent to work with all populations

### Terms

Duty, Privacy, and Confidentiality

**Standard of Care** professional conduct that is “consistent with the degree of learning, skill, and ethics ordinarily possessed and expected by reputable counselors practicing under similar circumstances

**Privilege (or Testimonial Privilege)** legal term that refers to the protection of confidential communication in the context of a legal proceeding *Client* “Waive the privilege” *Therapist* “Invoke the privilege”

Referring a client for differing religious beliefs, sexual orientation, or cultural background is a *discriminatory referral*

**Privacy:** the constitutional right of an individual to be left alone and to control his or her personal information

**Fiduciary Relationship** a professional relationship in which the professional providing the service commits to acting in the best interest and needs of the client (not our own).

*Ethical standards (codes) can be used by a court to determine whether a professional operated within the standard of care for his/her profession*

**Vicarious liability:** the responsibilities supervisors have to oversee the actions of their supervisees

### Types of Law

**Criminal/Penal Law** prosecuted by the government (not individuals)

**Civil Law (civil rights of individuals)** *Torts* wrongful acts by one individual against another: battery, defamation, invasion of privacy (breach of confidentiality) - malpractice (due to negligence)

*Civil commitment* emergency mental health treatment

**Administrative Law** created by governmental administrative agencies that develop regulations to define laws and are passed by Congress or state legislative body (HIPPA)

monetary compensation typically awarded for damage

### Ethical Decision-Making Model

1. Identify the Problem, 2. Examine the relevant ethics codes, laws, and regulations

3. Consider the values of our profession



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### Ethical Decision-Making Model (cont)

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| 4. Consider all potential factors that may influence your decision | 5. Consult with a trusted colleague, supervisor, and/or expert |
| 6. Pause – attend to your emotions                                 | 7. Enumerate the consequences of your decision                 |
| 8. Involve your client in decision-making process (when possible)  | 9. Make decision, 10. Implement decision                       |

### Termination and Referral by ACA A11

Cannot abandon client, if unable to assist client, refer elsewhere  
 Termination may be from *Intense value conflicts or countertransference* resulting in loss of objectivity, Incompetence in area of treatment focus

**Termination** if client is not improving, provide pre-termination counseling and refer elsewhere when indicated

*Appropriate transfer of care*, communicate with new provider(-s)/bridge sessions  
 Termination and referrals should not be made impulsively – seek consultation and document

**Value Conflicts** If we referred every client who is different or difficult, we'd never gain experience working with diversity  
 If you are having a pattern of value conflicts, may need to consult/refer/terminate

### Terms

**Subpoena** request for records **Court Order** issued by judge(must comply!)

**Transference** clients reactions to therapist based on previous important relationships; these reactions can take the form of intense thoughts/feelings/attitudes/fantasies/behaviors  
**Countertransference** therapists' reactions to clients

### Liability for Civil Damages

Failing to diagnose or predict dangerousness, Failing to warn potential victims of violent behavior  
 Failing to commit dangerous individuals, Prematurely discharging dangerous clients from a hospital

### Laws & Mental Health Profession

**Laws or Statutes** behaviors that will be allowed and minimum standards that will be tolerated in society (black/white)  
**Legislatures** *US Congress* federal laws *Mass General Court* state laws

**State laws:** state licensure laws that govern how and under what circumstances we can practice (i.e., state reporting laws; duty to warn)  
**Local (municipal) laws** determine where counseling can occur - zoning

**Federal laws:** HIPAA, Americans with Disabilities Act (ADA); Family Educational Rights and Privacy Act (FERPA)  
**HIPAA:** covered entities must comply **Covered entities:** health plans, health care clearinghouses, health care providers. Applies to transmission of EHR.

**HIPPA:** client has rights to change, restrict, amend, and access PHI



### Laws & Mental Health Profession (cont)

**Regulations** legislatures delegate power to administrative agencies to develop standards. These agencies add detail and issue guidelines to clarify law

**Ethics Codes** standards set by the profession that govern professional conduct

**Tarasoff v. Regents of the University of California:** The California court's ruling that requires therapists to breach confidentiality in cases in which the general welfare and safety of others is involved

**Case Law** judicial decisions based on a case from a court; involves an interpretation or reinterpretation of a law that becomes precedent  
*Tarasoff cases*

**Standards of HIPAA:** 1. Privacy requirements 2. Electronic transactions 3. Security requirements 4. National identifier requirements

**Jaffee v. Redmond** the Supreme Court ruled that communications between licensed psychotherapist and their clients are privileged and therefore protected from forced disclosure in cases arising under federal law

### American Legal Justice System

**US Constitution** (*Supreme* law; no law can conflict) - tripartite government a. *Legislative*(creates law) b. *Executive*(enforces law) c. *Judicial*(interprets law)

**Laws passed by Congress** (*federal* level - impacts US as a whole) or state legislative body (impacts Commonwealth of MA), Federal Constitution sets a *minimum bar*

### Various Mental Health Codes of Ethics

ACA code of ethics (2005), APA Ethical principles of psychologists and code of conduct (2002), Code of Ethics of the American Mental Health Counselors Association (2000)

NASW code of ethics (1999), The principles of medical ethics with annotations especially applicable to psychiatry (2006), Ethical standards for school counselors (2004), American Association for Marriage and Family Therapy Code of Ethics

### Various Ethical Stances

**Prescriptive Ethics** "specific guidelines that clearly demarcate ethical responsibilities that could be used by the ACA Ethics Committee in adjudication of ethical violations"

**Principle Ethics:** focus is on obligations, morality, and "right" action

**Normative Ethics:** acting in compliance with the law and following minimal ethical standards

**Aspirational Ethics** "create a document that helps professionals aspire to a higher level of ethical thought, reflection and practice"

**Virtue Ethics** focuses on ideals and the character of the professional Assessing the client problem(s)

### Ethical Themes

**Do good, Avoid harm or exploitation, Confidentiality, Act responsibly** Conduct must be guided by what is in the best interest of our clients

**Promote welfare of the client, Practice within one's area of competence, Uphold the integrity of the profession**

### Purpose of Ethics

Safeguard the welfare of clients, Protect the public, Clarify our values, Catalyst for improving practice

**Avoid ethical conundrums** guide ethical behavior when problems arise

Educate professionals about ethical practice / means of establishing standards of care

Provide a means of formal monitoring (professional accountability)



### Purpose of Ethics (cont)

**Obligation to self** monitor our behavior and encourage ethical behavior of colleagues

**Identify unethical conduct** point toward need for governing body (licensing board or professional organization) to evaluate conduct and “weed out” unethical providers

### Ethics Codes vs Laws

**Ethics** standards set by the profession that govern professional conduct (often murky) – Represent ideal standards set and enforced by professional associations

**Laws** rules set by the state/government re: behaviors that will be allowed (define the minimum standards that will be tolerated in a society) (black/white)

**Regulations** standards developed by experts in the field that are adopted as rules and enforced like laws –State licensing laws determine the scope of practice of professionals and how these laws will be enforced by licensing boards

### Principles & Virtues of Profession

**Nonmaleficence** Do No Harm (Hippocrates), **Beneficence** (benefiting others)

**Respect Autonomy & Self-Determination:** the promotion of self-determination and the freedom of clients to be self-governing within their social and cultural framework

**Discernment or Prudence** (exercise caution, deliberate reflection, tolerance for ambiguity, do not act impulsively)

**Integrity** (honest; whole) **Justice** (be fair and consistent), **Fidelity** (be faithful; honor commitments), **Veracity** (be truthful)

Accord Dignity, Treat Others with Caring and Compassion, Pursue Excellence, Be Accountable, Be Courageous

### Record Keeping for follow-up contact (Zur, 2015)

- a. Date of service and duration of session
- b. Type of service rendered (individual, couple, family, group)
- c. Nature of professional intervention or contact (treatment modalities, e-mail, phone contact)
- d. Current status (mental status, change in symptoms, high-risk concerns)
- e. Gifts from clients, therapists, or others, loans of books or CDS, and bartering arrangements
- f. Extensive use of touch or self-disclosure, g. Recording or videotaping of sessions, h. Dual relationship (nature, extent, etc.)
- i. Out-of-office experiences (e.g., home visits, attending weddings/funerals, attending a medical appointment with client, clinically meaningful incidental/chance encounters, etc.)
- j. Client responses/reactions to interventions, k. Current risk factors, l. Additional treatment modalities (medicine, hypnosis), m. Plans for future interventions, n. Qualitative aspects of therapeutic relationship, o. Prognosis
- p. Assessment of summary data, q. Consultations with other professionals, r. Case-related contacts – phone, email, mail, s. Cultural and sociopolitical variables
- t. Any ethical decision-making process, u. Contacts made with collateral providers or family members/loved ones, v. All consultations
- w. Termination/Transfer Note – why patient left treatment, circumstances around termination, and any other pertinent info such as post-therapy recommendations or transfer of care

### Ethics and Diversity

**Encapsulated:** viewing the world through a specific culturally bound lens. A cross-cultural counselor who perceives reality exclusively through the filters of their own life experiences

**Stereotype beliefs:** a widely held, simplified, and essentialist belief about a specific group.



### Ethics and Diversity (cont)

**Bruff vs. North Mississippi Health Services, Inc.** involved in employee assistance program provider who refused to counsel homosexual clients on the basis of religious beliefs and was eventually terminated by her employer

**Unintentional racism:** claiming to be free of any traces of racism

**The ethics codes of the ACA, the APA, and the NASW** clearly state that discrimination on the basis of sexual orientation is unethical and unacceptable.

It is important to understand that homosexuality and bisexuality are not indicative of mental illness.

Therapists have an ethical obligation to confront their personal prejudices, myths, fears, and stereotypes regarding sexual orientation.

People with chronic medical, physical, and mental disabilities represent the largest minority and disadvantaged group in the United States

**Social justice:** the fair and equitable distribution of power, resources, and obligations in society to all people, regardless of race, gender, ability, status, sexual orientation, and religious or spiritual background

### Confidentiality

**Hidden agenda** are seen as material that should be brought out into the open during a couples or family session.

Therapists should inform clients that any information given during private sessions will be divulged as they see fit in accordance with the greatest benefit to the family.

Therapists should not divulge in a family session any information given to them by individuals in private sessions.

Many believe it is wise to have a **no secrets** policy

**Fisher's (2008) 6-step ethical practice model:** 1.Preparation 2.Tell clients the truth "up front" 3.Obtain truly informed consent before making a disclosure 4.Respond ethically to legal requests for disclosure 5.Avoid the "avoidable" breaches of confidentiality 6.Talk about confidentiality

### Beginning With Clients

**Essential piece of information the family practitioner must provide before each individual agrees to participate in family therapy :** Risks of negative outcomes and positive benefits and confidentiality and limits to confidentiality, The purpose of therapy, what can be expected, and the option to withdraw at any time, Typical procedures, rights and responsibilities, and fee structure

### Ethical Issues & Considerations

Clinicians agree that conducting couples therapy while there is ongoing **domestic violence** presents a potential danger to the abused and is unethical

Developing a **multiple or dual relationship:** consider whether the potential benefits outweighs the potential for harm

A client wants to give a counselor a **gift:** be aware that accepting the gift may be culturally appropriate with this client

A common reaction of therapist who realize that they have **sexual feelings** towards their clients is to: feel guilty, anxious and confused

certain actions will inevitably lead to a progressive deterioration of ethical behavior is the **slippery slope** phenomenon

While practicing in Massachusetts, you receive a **request for records** from a former client: do not charge



### Ethical Issues & Considerations (cont)

Under Massachusetts General Law (MGL) chapter 122 section 12F, certain **minors** who are considered to be mature due to certain statuses, can provide consent without guardian approval in the cases of, the minor is: a member of the armed force, married, widowed, or divorced, a parent themselves

mental health professionals are expected to exercise 'reasonable care' in working with clients who are considering **abortion**. If they fail to do so, clients can take legal action against them for negligence

Because providing counseling services over the **Internet** (aka remote or distance counseling) is relatively new and controversial, a host of legal questions will NOT be addressed until lawsuits are filed pertaining to its use, or misuse, counseling practice

**Malpractice** claims are not reserved exclusively for the irresponsible practitioner. Clients may make allegations of unethical conduct or file a legal claim to negligence, even though the counselor may have acted ethically and appropriately. To succeed in a malpractice claim, the plaintiff needs to show that a breach of duty did exist in which the practitioner failed to provide the appropriate standard of care

A counselor working in an **AIDS**-related case has a few legal guidelines to help determine when or how to inform potential victim of the threat of HIV transmission

### Group Work

When participation in a group is part of a counseling master's program, safeguards must be in place to manage boundaries and reduce the risk of harm to students, **The safeguards include** informed consent of students, systematic instructor self-reflection, self-disclosure training

**Group leaders have a responsibility to:** explain its importance, inform members of the difficulties involved in enforcing it, clearly define what it means and its limits

As a rule, group leaders should conduct only those type of groups for which they have been trained

**Training for counselors working with groups:** Learning about ethical decision making regarding dilemmas encountered in group work, Personal (individual) psychotherapy, Personal experience in a self-exploration group, Becoming involved in supervised experiences

The **final (termination)** phase of group work may be the one that leaders handle most ineptly. Groups remain a powerful intervention tool across the life span, positively impacting childhood, adult and geriatric disorders

**Questions that needs to be pondered when screening prospective group members:** It is appropriate for this person to become a participant in this type of group, with this leader, at this time?

**Orienting group members to the group experience before it begins:** explore the members' expectations, clarify goals and objectives, discuss procedural details, explore the possible risks and values of group participation and discuss guidelines for getting the most from a group experience

The ethical, legal, and professional aspects of confidentiality have a different application in group situations

**Implications of group members and their therapist communicating with each other online, and when group members communicate with other members via the internet:** lack of technological skills and knowledge to protect information that is intended to remain private creates a risk of making this information public for all to see, increased risk of breach of privacy, increased risk of breach of confidentiality



