

Ethics and Clinical Practices: A Review For Clinicians

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PRESENTATION: This training is designed for both administrative and clinical staff members interested in ethical problem solving and legal risk management strategies.

During this training, participants will learn techniques for analyzing and resolving ethical dilemmas.

Special emphasis will be placed on the application of ethics to the treatment of individuals with co-occurring substance abuse and mental health problems.

Why are *you* here?

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This is why you are here...Protecting Your Certification, Licensure, Private Practice, Career, Company, Colleagues, Our Field, Your Personal Reputation and Your Personal Moral Foundation.

Over A 5-year period, a total of 30-counselor credentialing boards received a total of 2,325 complaints, that were categorized as follows:

- ▶ **24%** involved dual relationships of a non-sexual nature.
- ▶ **17%** challenged the competence of the counselor
- ▶ **8%** practicing without a license or misrepresenting credentials.
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Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Topics we need to cover...

- ▶ Basis of your ethics.
- ▶ Differing codes of ethics.
- ▶ Legally Defensible, Ethical in our Field, Personal Morality.
- ▶ Dual Relationships.
- ▶ Confidentiality.
- ▶ Duty to Warn.
- ▶ Privacy, Confidentiality, and Privilege.
- ▶ M.H. treatment and S.A. treatment.
- ▶ Mandatory Reporting.
- ▶ Subpoena's. Court Access.
- ▶ Access to Records.
- ▶ Electronic communications.
- ▶ Supervision.

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Topics we need to cover...

- ▶ We will use real world scenarios and examples to illustrate these issues and as a group find a consensus on how to respond.
- ▶ That's how you make the best ethical decisions, as a team.

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Excellence is an art won by training and habituation. We do not act rightly because we have virtue or excellence, but we rather have those because we have acted rightly. We are what we repeatedly do. Excellence, then, is not an act but a habit.

(Aristotle)

izquotes.com

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What is Ethics?

- ▶ 'Standards of Behavior for how people should act in the many *different* situations we find ourselves.'
- ▶ Business/Personal/Government/Society/Military/Medical; all have their own codes of ethics, and some agree with each other, some don't.
- ▶ How about what Ethics are NOT.
 - ▶ Not about how you feel. Some hard choices feel bad.
 - ▶ Not about Religion. Ethics can exist independent of religions.
 - ▶ Not about following the Law. Law can deviate from what is ethical.
 - ▶ Not following what is culturally acceptable. Many cultures deviate from broadly acceptable norms.
 - ▶ Not a Science. Science can explain what we are, but it does not tell us how to act.

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Why is it hard to identify Ethical Standards?

- ▶ Because we must identify on what do we base our Ethical Standards.
- ▶ And how do we apply them to the specific situations we face.
- ▶ Some of the Sources of Ethical Standards...

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Historic Greek sources provide a framework for our Western Ethical Thinking.

- ▶ The Utilitarian Approach: ethical action is that which produces the *most good for the least harm* for all those who are affected.
- ▶ The Rights Approach: ethical action is that which most respects the individuals *Moral Rights*. For example, the dignity of the individual is based on their ability to choose freely, have privacy, be told the truth.
- ▶ The Justice Approach: Ethical action is devoted to treating each person Equally, all must be treated with a balance of power or there is *injustice*.
- ▶ The Common Good Approach: Ethical action must be good for the common welfare, protecting all, especially the vulnerable.
- ▶ The Virtue Approach: Ethical action must be based on 'is my action consistent with my acting at my best.' Honesty, Compassion, tolerance, fidelity, integrity, self-control, courage are all examples of *Virtues*.

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But what about other standards: Eastern Ethics for example

	Western Ethics	Eastern Ethics
Focus	Finding Truth	Protocol and Respect
Basis	Rational Thought	Religious teachings
Emphasis	Logic, Cause and Effect.	Respect towards family
Roots in	Athens, Rome, Judeo-Christian	Hinduism, Buddhism, Confucianism and Taoism
Approach	Rational	Holistic and cultural
Conflict and Harmony	Good must triumph over Evil	Good and Bad, Light and Dark all exist in equilibrium.

Why would this ever be important to know?

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Eastern and Western points of view

- ▶ The main difference between eastern and western ethics is the fact that Western Ethics is about finding truth, whereas Eastern Ethics are very much about the protocol, and showing of respect. Eastern ethics is much more about doing what is right in terms of what is expected of you by your family, society and culture.
- ▶ Western Ethics, on the other hand, has more of an emphasis on self and what is rationally or logically true. Furthermore, Western Ethics places more emphasis on law and justice, whereas Eastern Ethics states that one must do what is right and expected and the universe will take care of the rest.

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What are your Client's Ethics?

- ▶ Have some awareness of your client's cultural background. It should not change your own ethics, but will inform you in your sessions. It may have a big impact in family therapy and couples therapy.
- ▶ If your ethics are out of alignment with your client's, your goals may not be their goals.

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We can begin exploring your own ethics and their application.

As a Group can you articulate the relationships between:

- ▶ legally defensible actions
- ▶ ethical practice
- ▶ personal morality

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What Is Your Personal Morality

- ▶ Personal Morality is your own internal ethical standard. What you base your own decisions on; what you are willing to defend with your personal integrity. If you are following a business policy or a legal statute that makes you uncomfortable it is likely because it conflicts with your own personal moral code.
- ▶ An example of this is a common, and questionable, practice. A judge who keeps a mentally ill man in jail when he could be legally released until trial, because the man has nowhere to live upon release. It may not be legal, but it might be evidence of the judges *Personal Morality*.

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What is Ethical Practice

- ▶ **Ethical practice** is your field's stance on the various proper actions that will be expected in given situations. This can vary from field to field, for example a counselor may have one opinion on a client sharing about how bad he felt selling drugs, and a State Police officer another opinion. High ethics can be maintained but the ethical decisions can be different for different counselors.
- ▶ Example: it has been standard practice in the past that a person seeking help for suicidal depression and alcoholism would be told by a drug treatment professional that they had to get stable around their suicidality before the drug treatment could begin. They would then be told by a mental health facility that they had to go through detox and be sober before they could be seen for depression. This was standard practice and seen as ethical by both sides. Now we realize we must treat both issues at the same time. That is what is best practice and ethical today.

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What is Legally Defensible Action

- ▶ Some action that upholds, or at least does not violate Local, State, and Federal Statutes.
- ▶ Legally defensible actions should flow from personal morality and ethical practice. If you are on solid ground with those you should be able to start to defend your actions. But are there exceptions. The law is grey, not black and white. If your actions are presented by an attorney to a jury in the wrong light, they might not sound as legally defensible, but could still be ethical and moral. Human decisions can be quirky.

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A scenario on Legally Defensible action...

- ▶ A nurse is in an E.R. dealing with a man who is intoxicated on an unknown combination of alcohol and drugs. He is in the admission process, lucid, hyperactive and smoking. She repeatedly tells him he cannot smoke in the ER due to the danger of fire from Oxygen being used, and the danger to other patients there who are in physical distress. He refuses to stop, even when told repeatedly it is policy and he must stop or else. Finally the nurse asks him to leave. He is later found dead on the grounds of the hospital from the effects of his drug combination. This was judged as Legally Defensible Action due to the danger he presented. But was this Moral and Ethical?
- ▶ Think of the different ways it could look depending on how it was documented!

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Some things you need to consider...

- ▶ **Legal Actions:**
 - ▶ What are your agencies contractual agreements with other agencies, (Government, Legal and Private)?
 - ▶ What are you required to report/ to whom/ how often/ what format?
 - ▶ What does your licensure/certification require of you regarding client confidentiality?
- ▶ **Ethical practices:**
 - ▶ What are the ethics of your agency?
 - ▶ Do you have any Policy/Procedures/Protocols reflecting Ethics in your agency? What are they?
 - ▶ What is your agencies mission statement?
 - ▶ Have you attended any in-services on Ethics within your agency?
 - ▶ Has your agency ever done something you felt went against your own Moral Code?
- ▶ **Personal Morality:**
 - ▶ Who was the greatest influence on you in creating your morals?
 - ▶ What do you personally think is the basis of your morality?
 - ▶ Can you articulate what your personal moral code is?

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Modern Ethical Principles

► We operate under five Ethical Principles

Autonomy (Fostering self determination)

Non-Maleficence (Do no harm)

Beneficence (Provide services that benefit society)

Justice (Fairness, equality and equitable treatment for all clients)

Fidelity (Remaining faithful to promises made to clients, such as protecting confidentiality)

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All of these contribute in varying degrees and with other contributions to our present concepts of Ethics, *and in many different areas.*

Notice the similarities between the present New Hampshire initiative "Resiliency and Recovery Oriented Systems of Care" and our 2300 year old basis for Ethics.

- "Resiliency is an *innate capacity*..."
- "ROSC's support Person Centered and *Self Directed* approaches..."
- "Expands the communities ability to be responsive to its members..."
- "Access To Recovery principles; Increased capacity, Increased access, *Client Choice*."
- What can we personally do to support these initiatives?

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Identify areas for improvement in your own personal ethics, and expand that to your colleagues, practice, business, profession at large.

- ▶ So what are the biggest areas of concern for our profession, and
- ▶ How can I make a difference?

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“The difference between moral dilemmas and ethical ones, philosophers say, is that in moral issues the choice is between right and wrong. In ethics the choice is between two rights.”

Pamela Warrick

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You can make a difference by learning how to make better Ethical Decisions!

How to Make Ethical Decisions:

- 1) Recognize an Ethical Issue.
- 2) Get the facts.
- 3) Evaluate Alternative Actions.
- 4) Make a decision and test it.
- 5) Act and Assess the results.

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- ▶ How do we evaluate and find balance in:
 - ▶ What is Legally Defensible?
 - ▶ What is Ethical Practice in your field?
 - ▶ What is your own Personal Morality?
- ▶ A clue, everything must be based initially on what is morally acceptable to you. How could any of us function in our field of choice if our *Personal Morality* is in conflict with the Ethics of our field or the Legal Statutes that govern our actions.

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I need two volunteers to give out the handouts.

Break into small groups, no more than 4 people per group, review the handout and take 5 minutes to discuss and write down ideas.

Elect a representative to share your responses.

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Protecting Your Certification, Licensure, Private Practice, Career, Company, Colleagues, Our Field, Your Personal Reputation and Your Personal Moral Foundation.

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Understanding The Problematic Nature of Dual Relationships

- The characteristics that contribute to a dual relationships can be difficult to recognize
- Potential for harm ranges from extremely harmful, to benign or even beneficial
- With the exception of sexual dual-relationships, there is little consensus regarding the propriety of dual relationships

Adapted from:

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Understanding The Problematic Nature of Dual Relationships

- Dual-relationships are sometimes unavoidable
- Once a client completes treatment, there is little consensus between various professional groups as to when, if ever, it is appropriate for the client and his/ her former counselor to develop a personal *friendship*

Adapted from:

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Understanding The Problematic Nature of Dual Relationships

- ▶ While there is agreement that a power differential exists between a counselor and a client, there is little agreement as to how to best reconcile the existence of a power differential when problem-solving dual relationships.
- ▶ Define the power differential between Therapist and Client.

Adapted from:

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Understanding The Problematic Nature of Dual Relationships: who has power?

- ▶ Client has the greater legal *rights/power*. Laws defending them and power to sue, ability to be defended by law up to and including you being arrested/convicted. They state who can see their records and who you can talk to.
- ▶ Clinician has the power to *influence* the client, knows their secrets, and wields power over their unconscious issues. We are the experts they depend on at the time of their greatest vulnerability. We decide, right or wrong, who sees their records. We decide who we talk to.

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Understanding The Problematic Nature of Dual Relationships

- ▶ Maintaining therapeutic boundaries and avoiding problematic dual-relationships represent one of the counseling professions biggest ethical challenges.
- ▶ Codes of ethics discourage dual-relationships but do not expressly forbid them, and instead urge counselors to "...avoid dual-relationships that could impair professional judgment or increase the risk of harm to the client."

Adapted from:

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Understanding The Problematic Nature of Dual Relationships

- ▶ Cultural beliefs and community standards are important variables in problem solving boundary issues and dual-relationships
- ▶ "Boundary crossings", which are defined as "...departures from usual practice that are made to benefit a particular client at a particular time..." while generally considered ethically acceptable, also place practitioners at risk of lawsuits
- ▶ Describe examples of Boundary Crossing...

Adapted from:

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Understanding The Problematic Nature of Dual Relationships

- ▶ Boundary issues arise in many forms, including:
 - Bartering
 - Social relationships with clients
 - Business relationships with clients
 - Post-termination friendships
 - Accepting gifts from clients
 - Counselor self-disclosure
 - Physical contact with clients
 - Social media contacts

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Group Exercise

Directions:

- ▶ Select a scribe to record and report your group's responses to the scenarios presented
- ▶ As a group discuss the assigned scenarios and try to reach consensus as to the appropriate response.
- ▶ In case of strongly held disagreements, the scribe should record and present the competing perspectives.
- ▶ You have 10-minutes to complete the exercise

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Personal Ethical Decision Making

- ▶ Whenever faced with a morally or ethically difficult situation, consult with colleagues, supervisors and subject-matter experts.
 - Licensed & certified clinical supervisors, like attorneys, have an ethical responsibility to stand behind the advice they give to subordinates.
 - Ideally, whenever clinical consultation occurs, it should be documented in writing by both the person giving and the person receiving the consultation.

Adapted from:

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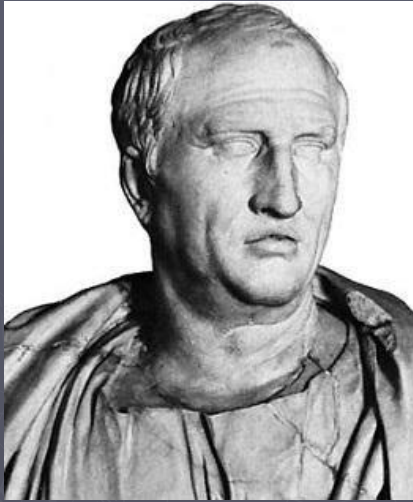
Personal Ethical Decision Making

- ▶ Remember, you are ultimately responsible for whatever you decide to do or not do, regardless of the source of the advice. Hence the importance of seeking advice from the right people and not just your friends or individuals who will tell you what you may want to hear.
- ▶ Be cautious whenever working with clients who have a history of suing as research suggests that a past history of filing lawsuits is a good predictor of who will file future lawsuits.

Adapted from:

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"Any man can make mistakes, but only an idiot persists in his error."

Marcus Tullius Cicero

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You can make a difference by *learning how to make* better Ethical Decisions!

► How to Make Ethical Decisions:

- 1) Recognize an Ethical Issue.
- 2) Get the facts.
- 3) Evaluate Alternative Actions.
- 4) Make a decision and test it.
- 5) Act and Assess the results.

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Models for Ethical Decision Making (Remley & Herlihy, 2007)

Identify and define the problem

- ▶ Consider the moral principles and virtue ethics that may apply
- ▶ Tune in to your own feelings, beliefs and biases
- ▶ Consult with colleagues or experts

Adapted from:

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Models for Ethical Decision Making (Remley & Herlihy, 2007)

- ▶ *Involve your client in the decision making process*
- ▶ Identify desired outcome
- ▶ Consider possible actions
- ▶ Choose and act on your choice

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall.

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Models for Ethical Decision Making (Corey, 2000)

- ▶ Operationally define the problem, issue or question
 - Are the concerns mainly ethical, legal or moral?
- ▶ Identify the possible scope and ramifications of the decision being contemplated
 - Who are the individuals potentially impacted?
 - What are the rights and responsibilities of those impacted?
 - How may the welfare of those impacted be affected?

Adapted from:

Corey, G. (2000). *Theory and practice of counseling and psychotherapy* (6th ed.). Belmont, CA: Brooks-Cole Publishing.

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Models for Ethical Decision Making (Corey, 2000)

- ▶ Benchmark options against relevant industry standards
 - *Codes of Ethics* of various professional organizations
 - Organizational policies, procedures and protocols
 - Federal and state laws
 - Legal precedents and court rulings
 - Seek consultation from multiple sources to obtain a variety of perspectives

Adapted from:

Corey, G. (2000). *Theory and practice of counseling and psychotherapy* (6th ed.). Belmont, CA: Brooks-Cole Publishing.

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Models for Ethical Decision Making

(Corey, 2000)

- ▶ Incorporate the five ethical principles into the evaluation of options
 - Autonomy
 - Beneficence
 - Non-maleficence
 - Justice
 - Fidelity
- ▶ Decide upon a course of action and implement the decision

Adapted from:

Corey, G. (2000). *Theory and practice of counseling and psychotherapy* (6th ed.). Belmont, CA: Brooks-Cole Publishing.

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What If You Suspect A Colleague Of Unethical Or Illegal Behavior?

- NASW Code of Ethics (Rev. 2008), Section 2.11d Unethical Conduct of Colleagues,
- "...social workers who believe that a colleague has acted unethically should take action through appropriate formal channels...state licensing board or regulatory body..."

Adapted from:

National Association of Social Workers (Revision 2008) *Code of Ethics*.

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What If You Suspect A Colleague Of Unethical Or Illegal Behavior?

- **Possessing Knowledge**

- ▶ Possessing knowledge is intended to imply direct, first-hand observations that a counselor filing a complaint can testify to, and is not meant to include hearsay evidence.
- ▶ If a counselor's knowledge about a colleague's alleged illegal/ unethical behavior comes from a client's self-report, the role of the counselor hearing the allegations is to educate the client as to how he/ she can file a formal complaint. The counselor should not try to influence what action the client ultimately takes, but rather should provide support and information as the client makes his/ her own decision.
- ▶ Counselors hearing third-party complaints should not become self-appointed investigators that set out to determine the veracity of the allegation.

Adapted from:

American Counseling Association (2005) *Code of Ethics*. Washington, DC: Author.

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Filing A Formal Complaint

- ▶ Recommended necessary conditions for reporting unethical behavior of colleagues
 - It is impossible to resolve the issue directly with the counselor you are accusing because of the seriousness of the charges, or because attempts at informal resolution have failed.
 - You are certain and have direct knowledge that a serious ethics violation has occurred that is causing substantial harm or has caused harm.
 - You have consulted with colleagues that agree that a formal report/complaint must be filed.
 - You are willing to participate in a formal hearing and testify against the counselor whom you are accusing of an ethics violation.
 - You are prepared to defend yourself if a counter-claim is lodged against you.

Adapted from:
American Counseling Association (2005) *Code of Ethics*. Washington, DC: Author.

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Principle and Virtue Ethics

What Should I Do?

Who Should I Be?

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Principle Ethics

- ▶ **Principle Ethics:**
- ▶ Agreed upon assumptions or beliefs shared by members of the helping professions
 - “What should I do?”

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Principle Ethics

- ▶ **Respect for Autonomy** (Fostering self determination)
- ▶ **Non-Maleficence** (Do no harm)
- ▶ **Beneficence** (Provide services that benefit society)
- ▶ **Justice** (Fairness, equality and equitable treatment for all clients)
- ▶ **Fidelity** (Remaining faithful to promises made to clients, such as protecting confidentiality)
- ▶ **Veracity** (Truthfulness to clients and other professionals) *(notice, this is a new addition to the lists of Ethics already described.)*

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Virtue Ethics

- ▶ **Virtue Ethics:**
- ▶ Personal traits of character or virtue
 - “Who should I be?”
 - These are the many and varied things that make us a good counselor, and a good person.

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Virtue Ethics

- ▶ **Discernment** (Ability to perceive ethically relevant aspects of a situation and what principles to apply; ability to tolerate ambiguity; understanding link between current behavior and future consequences)
- ▶ **Integrity** (Doing right based on stable moral values, not out of obligation, fear of consequences, or hope for personal gain)
- ▶ **Self-Awareness** (Insight into the ways that your personal assumptions, convictions and biases impact relationships and interactions)
- ▶ **Acceptance of Emotions** (Understanding that emotion informs reason and that better decisions are made and logic is applied more accurately with an understanding of the emotions involved)
- ▶ **Interdependence with the Community** (Understanding that values exist within a context of a larger community)

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Confidentiality & Privileged Communication

Ethics and the Law

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Confidentiality & Privileged Communication

- ▶ Confidentiality and privileged communication are both based upon a client's right to privacy.
- ▶ Confidentiality refers to multiple ethical and legal standards, whereas privileged communication specifically refers to a federal ruling later replicated by some states.

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Confidentiality & Privileged Communication

- ▶ Counselors typically view confidentiality as a fundamental ethical obligation and a necessary condition for clients to feel comfortable disclosing, research does not clearly support this fundamental belief.
- ▶ Confidentiality and privilege belong to the client, not the counselor, and therefore *can only be waived by the client*.

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Privileged Communication

The concept of privileged communication resulted from a U.S. Supreme Court ruling in *Jaffee v. Redmond* (1996) that decided in favor of the existence of such a privilege under the Federal Rules of Evidence. There are several limitations to that ruling.

Adapted from:

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Privileged Communication

► Limitations to the Jaffee vs. Redmond ruling, include:

- The Jaffee v. Redmond ruling applied only to the Federal Court system and granted the privilege to Social Workers
- The Jaffee v. Redmond ruling applied recognized Social Workers but made no references to Addictions or Mental Health Counselors
- While many states subsequently passed laws that granted privileges to various behavioral health professionals, Connecticut and Rhode Island have no such law

Adapted from:

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Confidentiality & Federal Law

42 CFR Part 2, HIPAA

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42 CFR Part 2

The Federal Alcohol and Drug Abuse Confidentiality statute, commonly referred to as 42 CFR Part 2, applies to any organization that either directly or indirectly receives federal funding or is subject to federal oversight for any substance abuse treatment, prevention, education, training, rehabilitation, or research service.

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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42 CFR Part 2

42 CFR Part 2 prevents the disclosure of substance abuse related information except in limited circumstances that include:

- When the client provides written consent to release the information
- Medical emergencies
- Audits or evaluations
- To reduce the risk of death or serious bodily harm should a court order be secured

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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42 CFR Part 2

42 CFR Part 2 prevents the disclosure of substance abuse related information except in limited circumstances that include:

- When so ordered by a court of appropriate jurisdiction
- Whenever a crime is committed on or about the premises of the substance abuse program, against the clients, or against the staff
- Whenever a law enforcement officer is carrying out an arrest or search warrant
- When an organization is providing administrative support services to the substance abuse program under a Qualified Service Agreement

Adapted from:

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HIPAA

The *Health Insurance Portability and Accountability Act* (HIPAA), which was enacted in 1996, addresses the security, privacy and transaction related issues involved when storing, transmitting, or receiving protected health information electronically.

- HIPAA is a minimal standard not the only one.

Adapted from:

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HIPAA

- ▶ The types of records maintained by counselors can be categorized into three categories, which HIPAA collectively refers to as Protected Health Information (PHI) or a record set. These categories are as follows:
 - Recordings
 - Clinical Case Notes
 - Administrative Records

Adapted from:

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HIPAA

- ▶ Recordings include written case summaries, audio and video recordings of actual counseling sessions and other items used in case conferences, training, supervision, and staff development efforts.

Adapted from:

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HIPAA

- Clinical case notes include the assessments, diagnostic profiles, treatment plans, progress notes and discharge summaries that a counselor maintains of document sessions and treatment progress.

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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HIPAA

- Administrative records include appointment books, billing and payment records, intake and eligibility verification forms, and other records maintained that are not considered recordings or clinical case notes.

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Exceptions to Confidentiality

- ▶ Sharing information with subordinates or fellow professionals within the same agency is permissible under the following circumstances:
 - Clerical and fiscal personnel routinely handle confidential information in order to carry out the functions of their jobs
 - Counselors are ethically obligated to consult with colleagues or subject matter experts when faced with situations beyond their scope of knowledge

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Exceptions to Confidentiality

- ▶ Sharing information with subordinates or fellow professionals within the same agency is permissible under the following circumstances:
 - Supervisees routinely disclose confidential information about their clients to their supervisors
 - Coordinating care with other professionals necessitates the exchange of confidential information

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Exceptions to Confidentiality

- ▶ Protecting someone who poses a danger to self or others require disclosure of confidential information whenever one of the following conditions exist:
 - Counselor suspects child abuse, neglect, or exploitation
 - Counselor suspects elder abuse, neglect, or exploitation
 - Counselor suspects abuse, neglect, or exploitation of a developmentally disabled individual

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Exceptions to Confidentiality

- ▶ Protecting someone who poses a danger to self or others may permit or require disclosure of confidential information whenever one of the following conditions exist:
 - Client unable to care for him/herself
 - Client is at risk of suicide
 - Client has a fatal, communicable disease and the client's behavior is putting others at risk

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Compromises to Confidentiality

- ▶ Confidentiality is compromised when simultaneously counseling multiple clients, including the following examples:
 - Group counseling
 - Couples counseling
 - Family counseling

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Compromises to Confidentiality

- ▶ Counseling minor clients requires special consideration of issues related to confidentiality and privileged communication
- ▶ Counseling adult clients who have a legal guardian with health care power of attorney requires special consideration of issues related to confidentiality and privileged communication

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Mandated Reporting

► Examples of Federal & State Mandated Reporting

- Suspected child abuse, neglect, or exploitation
- Suspected elder abuse, neglect, or exploitation
- Suspected abuse, neglect, or exploitation of a developmentally disabled individual
- Client has a fatal, highly contagious disease and the client's behavior is putting others at risk

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Mandated Reporting

► Mandated reporting also exists in the following examples:

- Court ordered disclosure (by a judge)
- Client initiated lawsuit or formal complaint against a counselor
- Client claims emotional damage in a lawsuit
- Civil commitment proceedings are initiated

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Duty to Warn

► Differs from State to State

- Ethical concept in most professional Codes of Ethics
- Law In some States
- No duty to warn law in Connecticut or Rhode Island
- There is Duty to Warn in New Hampshire

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Duty to Warn

- "Most states have laws that either require or permit mental health professionals to disclose information about patients who may become violent. Those laws are receiving increased attention following recent mass shootings, such as those in Aurora, Colo., and Newtown, Conn. A New York law enacted Jan. 15, 2013, moves that state's law from a permissive to a mandatory duty for mental health professionals to report when they believe patients may pose a danger to themselves or others but protects therapists from both civil and criminal liability for failure to report if they act "in good faith." New York's new law also allows law enforcement to remove firearms owned by patients reported to be likely to be dangerous.

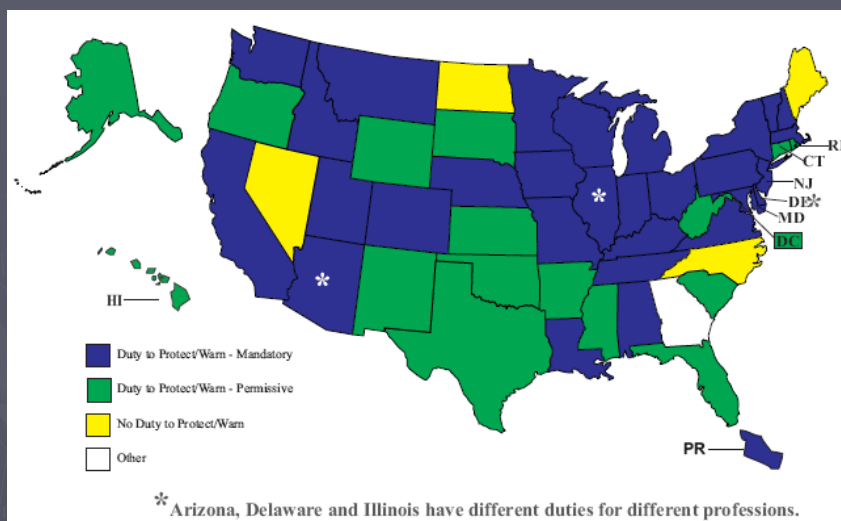
► Source: National Conference of State Legislators 2013

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- ▶ Under ethical standards tracing back to the Roman Hippocratic Oath, doctors and mental health professionals usually must maintain the confidentiality of information disclosed to them by patients in the course of the doctor-patient relationship. With some exceptions codified in state and federal law, health professionals can be legally liable for breaching confidentiality. One exception springs from an effort to protect potential victims from a patient's violent behavior. California courts imposed a legal duty on psychotherapists to warn third parties of patients' threats to their safety in 1976 in *Tarasoff vs. the Regents of the University of Southern California*. This case triggered passage of "duty to warn" or "duty to protect" laws in almost every state as summarized in the map and.
- ▶ Opinions about the laws vary. The American Psychological Association has advocated allowing mental health workers to exercise professional judgment regarding the duty to warn and not to unnecessarily expand "dangerous patient" exceptions. Mandatory reporting laws, say some professionals, may discourage people from seeking professional help or fully disclosing their intentions; or providers may be reluctant to treat potentially violent patients because they fear liability for failure to properly fulfill the duty to warn."
- ▶ Source: National Conference of State Legislators 2013

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Duty to Warn



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Special Privacy Consideration Related to the Use of Technology

- ▶ Caution must be taken when talking over the telephone, especially cordless and cellular phones, as conversations can be recorded by either party in the call or monitored by third-parties. Additionally, it may be possible that a speakerphone is in use or that counselors are not talking to whom they believe they are talking.

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Special Privacy Consideration Related to the Use of Technology

Counselors should remember that messages transmitted or received via the internet, e-mail, answering machines, voice mail, answering services, pagers, facsimile machines, and text messaging are especially vulnerable to interception by third-parties for whom disclosure of protected health information is not authorized.

Please note, texting is never secure and can be very easily intercepted.

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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Special Privacy Consideration Related to the Use of Technology

In order to be as compliant with HIPAA as is feasible in this electronic age the following should be implemented at every agency and private practice:

- An administrative policy on electronic communications with clients such as e-mail, text, Skype, tweeting, Facetime etc.
- Written agreements that clients sign explaining in detail the dangers to confidentiality and ways these communications can be compromising.
- A clear policy and written agreement that if a client refuses electronic communication it will in no way impact their treatment, and right to treatment.

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Clinical Documentation

- ▶ Two major purposes for maintaining records include:
- ▶ Documenting the provision of the quality of care
- ▶ “self-protection”

Adapted from:

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Clinical Documentation

- ▶ Clients benefit from well-maintained records in several ways, including:
 - Continuity of care upon referral or transfer to another provider
 - Improved communication between members of a multi-disciplinary team
 - Creation of a mechanism to track progress
 - Creation of an accurate record of assessment findings, diagnostic profile, treatment, discharge status and post-discharge referrals

Adapted from:

Remley, T. P. & Herlihy, B. (2007) *Ethical, legal, and professional issues in counseling*. (2nd ed., updated). Columbus, OH: Merrill Prentice Hall

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"Self- Protection" Documentation

- ▶ Careful and detailed "self-protection" documentation is essential whenever a counselor's actions are likely to be reviewed by outside entities such as:
 - Ethics panels
 - Mental Health Advocate's or Other Court Officials
 - Human Rights Officers and other official Ombudsmen
 - Practitioner licensing & certification boards
 - Civil and criminal courts
 - Organizational accrediting bodies
 - Governmental organizations with oversight & funding authority
 - Health insurance companies and other funding sources

Adapted from:

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"Self- Protection" Documentation

- Careful and detailed "self-protection" documentation is essential whenever the following situations occur:

- Counselor is accused of unethical or illegal behavior
- Counselor reports a case of suspected child abuse
- Counselor reports a case of suspected elder abuse, neglect or exploitation
- Counselor believes that client is a danger to self or others
- Counselor is exercising a duty to warn disclosure
- Client has a past history of filing suit against a third-party

Adapted from:

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"Self-Protection" Documentation

- Careful and detailed "self-protection" documentation is also essential whenever the following occurs:

- Counselor is treating a client currently involved in legal proceedings that could result in the counselor being called to testify or disclose records
 - Custody disputes
 - Divorce proceedings
 - Personal injury lawsuits
 - Malpractice suits
 - Estate and probate proceedings
 - Bankruptcy filings
 - Workers' compensation and unemployment claims

Adapted from:

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"Self-Protection" Documentation Tips

- ▶ "Self-protection" documentation should be completed in real-time, be kept current and commence as soon as any of the above conditions are present, be careful and detailed. Documents should never be back dated, including catch-up summary documentation that should be dated the day it was written.
- ▶ "Self-Protection" documentation should include relevant factual information (who, what & when), as well as the rationale for decisions made and actions taken/not taken. "Just the facts."
- ▶ "Self-Protection" documentation should avoid subjective opinions, judgmental statements or conclusions.

Adapted from:

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▶ And we are done.

Bye Bye for now.

Live Long and Prosper.



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