HANDOUTS

Ethics & Risk Management Update for Experienced Therapists

Presented by

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AGENDA

9:00 Complex Multiple-Role Conflicts with Clients

- Problem relationships and why they occur
- Discriminating between the acceptable and unacceptable, coping with "blind spots," the trajectories and continua of relationships
- Strategies for resolving unavoidable conflicts and unpleasant surprises
- Analysis of problem cases

10:20 Break

10:35 Challenging Relationships with Colleagues

- Troubled or troubling colleagues, employees, students, and supervisees
- Strategies for preventing problems and intervening with troubling people

12:00 p.m. Lunch (on your own)

1:15 Recent Legal Decisions and Policies

- Assessment/evaluation issues
- Confidentiality
- Money matters
- Managed Care
- Non-traditional practice (e.g., coaching, consulting, and dispute resolution)

2:30 Break

2:45 Hot Topics

- Issues, challenging cases, and dilemmas proposed by participants via pre-conference survey

4:15 Adjournment

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Most frequent causes for disciplinary actions

- The most frequent causes of disciplinary action against 2,858 U.S. psychologists during 1983-2005:
  1. Unprofessional/unethical/negligent practice
  2. Conviction of a crime
  3. Fraudulent acts
  4. Improper/inadequate record keeping
  5. Failure to comply with continuing education requirements
  6. Breach of confidentiality

Addressing Complex Multiple Role Conflicts with Clients

I didn't see that coming!

Multiple Role Challenges

- Recognizing the issues
  - Two roles with the same person
  - Additional role with related person
  - Promise of future relationship
- Understanding the Origins
  - Inherent conflict of interest
  - Loss of objectivity
  - Potential exploitation

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Multiple Role Challenges

- Identifying
  - Obligation rests with the professional
- Intervening in unforeseen circumstances
  - Take prompt reasonable steps with the client's best interests in mind
- Resolving the problems with 3rd party involvement
  - Promptly clarify relationships and take reasonable action to resolve the conflict

Considering crossing boundaries?

- Ask yourself:
  - How will this help the client?
  - How will crossing the boundary comport with or advance the client's treatment plan?
  - Will the boundary crossing comport with the client's diagnosis, history, culture, and values?
- Then:
  - Document the boundary crossing—and your supporting rationale in the client's record;
  - Discuss the boundary problem, with the client in advance (when possible) to avoid misunderstandings.
  - Consider any power differential and assure that no exploitation of the client will occur.
  - Consider consultation with a knowledgeable colleague.

Standards of care and the "good enough clinician"

- Perfection is not the standard
- Mistake or "judgment call" error
  - People cannot avoid mistakes (but a mistake does not = negligence)
- Departure from standard of care
  - Many practitioners would not do it
- Gross negligence
  - Extreme departure from usual professional conduct
  - Most practitioners would not do it

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Additional questions worth asking:

- Is entering into the secondary relationship necessary, or should I avoid it?
- Can the multiple relationship potentially cause harm to the client?
- If harm seems unlikely or avoidable, would the additional relationship prove beneficial?
- Is there a risk that the secondary relationship could disrupt the therapeutic relationship?
- Can I evaluate this matter objectively?

When does crossing a boundary become a violation ?

- If the action is viewed by the client as uninvited or unwelcome, it will likely be viewed as a boundary violation.
- If it results in harm to the client, it most definitely will be viewed as a boundary violation.
- Furthermore, failure to attend to prevailing community standards and expectations, as well as the role of the client's diagnosis, history, values, and culture, may cause a well-intended action to be seen as a boundary violation.
  - For example, to use touch may be clinically relevant and appropriate for one client, but for another with a history of sexual and physical abuse, the same action may likely be construed as a harmful and unwelcome boundary violation. In summary, one person's intended crossing may be another's perceived violation.

Forensic contexts create mutually exclusive choices

- The decision to offer therapeutic services and forensic services requires mutually exclusive professional choices.
- Providing each service requires the expert to make a mutually exclusive choice of priorities: between patient welfare and assisting to the court.
- Providing each service requires a mutually exclusive choice: a relationship with the patient–litigant based on trust and empathy or one based on doubt and distance.
- Providing each service also requires a mutually exclusive level of involvement in the fabric of the patient–litigant's mental health: trying to better it or dispassionately evaluating it for the court.

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Challenging Relationships with Colleagues

In quarrelling, the truth is almost always lost.

Tense inter-professional and peer relationships

- Who Complains About Their Own and Why?
- Cooperation with Other Professionals
- Interference with Ongoing Relationships
- Making a Referral
- Professional Etiquette
- The Vindictive Colleague

- The potential for uncollegial behavior increases when the following conditions pervade the professional work setting:
  - competitiveness,
  - limited resources,
  - few opportunities for advancement,
  - low morale,
  - too heavy workload
  - inadequate or unpleasant working conditions (e.g., noisy, crowded, lack of privacy),
  - incompetent or ambiguous management styles, and
  - real or perceived inequities.

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Feet of Clay (part 1)

- Two Iowa sex offenders locked up for a possible lifetime of mental-health treatment will get new trials because the chief witness against them has admitted an addiction to child pornography.
- Dr. Joseph Belanger, a North Dakota psychologist, has not been criminally charged, but he was forced to leave his hospital job after he notified bosses that federal authorities had seized his home computer.

- Belanger, in a Nov. 27 letter to a North Dakota licensing board, blamed childhood sexual abuse and the fact that he has "been so frightened of the world and of women that I mostly used pornography as an outlet."
- http://www.desmoinesregister.com/apps/pbcs.dll/article?AID=/20080720/NEWS05/807200337/-1/BUSINESS04

Feet of Clay (part 2)

- Prominent Seattle psychologist who often served as an expert witness in sexual-abuse and child-custody cases arrested and commits suicide.
- On July 25, 2007, employees at a local hotel found Stuart Greenberg's body with a note reading, "medical personnel, do not resuscitate. Let me die."

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- Greenberg, 59, was well-known as an expert witness in sexual-abuse cases, was frequently appointed as a parenting evaluator in child-custody cases.
- He was arrested on July 3rd then suspended from practice earlier in the month after allegations surfaced that he had secretly videotaped a woman in his office bathroom.
- An acquaintance had found the videotape in the psychologist's VCR and alerted the person who appeared on the tape, police said.
- While in jail, Greenberg had been placed on suicide watch, according to the Renton police report. He was conditionally released two days after his arrest.
- http://seattletimes.nwsource.com/html/localnews/2003808201_greenberg27m.html

Strategies to Prevent Problems with Colleagues

Cooperation v. Competition

- Colleagues should always do their best to cooperate with other professionals when the best interests of clients, supervisees, or students are at stake.
- Although the ultimate choice of with whom to seek therapy or advice belongs to the client, services should not be provided in a manner that causes confusion or conflicts with a client's preexisting or ongoing relationships with other professionals.

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Courtesy and Direct Contact

- A display of courtesy while relating to other professionals will usually prove the most appropriate demeanor, even when one has reason to feel annoyed with them. In those instances when professional disagreements require a candid airing, the forum should be an appropriate one, and the goal should be focused on upholding professional integrity rather than on personal humiliation or inflicting professional damage on a colleague's reputation. Displays of personal animosity should be kept away from the professional arena.
- Colleagues should try to resolve disputes informally whenever possible and appropriate and should attempt to prevent disputes by clarifying mutual expectations at the outset of any collaborative arrangement.

Supervisees, employees, & students

- Supervisees, employees, and students have an inherent disadvantage in any disagreement with their educators, supervisors, and employers, respectively. Recognize this fact with respect to the obligation to treat such people with courtesy, fairness, and dignity.
- Therapists should exercise caution and diligence in training and monitoring the behavior of employees and supervisees to ensure their conformity with ethical practice.
- When preparing letters of reference, it is wise to be honest and direct, grounding evaluations in behavioral indicators and objective, verifiable evidence rather than opinion and innuendo. The sort of letter one can write in good conscience should generally be discussed in advance with the candidate.

Provide fair treatment, even under stress

- Both male and female mental health professionals must familiarize themselves with subtle and more obvious forms of sexual and gender harassment and avoid engaging in such acts.
- When placed in a decision-making role with respect to a supervisee, colleague, or student (e.g., regarding grades, promotion, or tenure), mental health professionals should recognize the stress on these individuals and afford appropriate consideration and due process.
- In dealing with an especially difficult or troubling student, employee, or colleague, it is generally best to use standard rules and procedures, while attempting to avoid being caught up in an angry emotional response.

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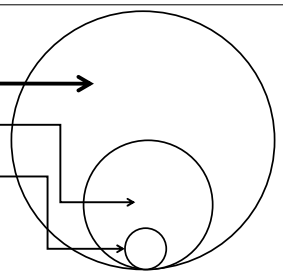
Legal Decisions and Policies Related to Practice

Confidentiality
Coerced Treatment
HIPAA
Money Matters and Managed Care
Non-Traditional Practice

Can you keep a secret?

- Privacy
  - A constitutional right
- Confidentiality
  - A professional standard
- Privilege
  - A narrow legal protection



Confidentiality source:
http://jaffee-redmond.org/

Confidentiality Case Law & Psychotherapy

- *Tarasoff*
- *Jaffe v. Redmond*
- *Swidler & Berlin and James Hamilton v. United States*
- *United States v. Chase*

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Confidentiality following a patient's death

- Middlebrook, D. W. (1991). *Anne Sexton: A biography.* New York: Vintage Books.
  - Martin Orne, MD, PhD
- *Swidler & Berlin and James Hamilton v. United States* U.S. 97-1192.
  - Opinion by Rehnquist, joined by Stevens, Kennedy, Souter, Ginsburg, and Breyer held that notes were protected by attorney-client privilege because both a great body of case law and weighty reasons support the position that attorney-client privilege survives a client's death, even in connection with criminal cases.
    - Opinion cited: *Jaffee* v. *Redmond*, 518 U.S. 1, 17-18, 135 L. Ed. 2d 337, 116 S. Ct. 1923 (1996)

United States v. Chase, 340 F 3d 978 (9th Cir. 8/22/03)

- Gene Chase received treatment at Kaiser Permanente from psychiatrist Kay Dieter in 1997. He suffered from irritability, depression, and symptoms of anger including episodes of rage and obsessive rumination against certain people, including those who participated in various legal proceedings in which Defendant was involved.
- Eventually Chase was diagnosed with bipolar type II disorder, received disability benefits due to his psychiatric condition. and met with Dr. Dieter every few months for therapy and for management of his medication. Chase met more often (ranging from bi-weekly to monthly) with psychologist Robert Schiff for psychotherapy.

United States v. Chase

- During a session in August, 1999, Chase showed Dieter his day planner, containing a list of names, addresses, and social security numbers. The list included 2 FBI agents who had investigated him. Chase confided to Dieter that he had thought about injuring or killing these people and had threatened some of the listed individuals several times during the prior 5 years.
- Dr. Dieter felt concerned that Defendant might act on his threats. Chase told Dr. Dieter that he had no intention to act immediately on his homicidal thoughts. Nonetheless, Dieter warned Chase that if he told her specifics about plans to kill, she would have a duty to disclose the threats to the intended victims so that they could protect themselves.

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- In October, 1999, Chase called Dr. Dieter to tell her that he had argued with his wife and was extremely upset. Fearing that Chase was losing his support system. Dieter met with a supervisor and with Kaiser Permanente's legal counsel to discuss again whether Defendant's threats should be disclosed. Legal counsel advised Dr. Dieter to contact the local police department in Corvallis, Oregon, Defendant's home town. Dr. Dieter did so and the FBI got in touch with her. She disclosed to the FBI agents the threatening statements that Chase had made during therapeutic sessions and identified the people whom Defendant had threatened.
- Chase also made threats to switchboard operators at Kaiser.
- Ultimately he was convicted on a variety of charges after barricading himself in his home with a weapon.
- He appealed in part on allegations that Dieter had been allowed to testify at trial about threats made in therapy.

And the court ruled…

- Was Chase's communication to Dr. Dieter of threats to third parties a confidential communication, ordinarily, subject to a federal testimonial privilege? We answer: "yes."
- Did Dr. Dieter properly disclose the threats to law enforcement personnel? Again, our answer is "yes."
- Did Dr. Dieter's disclosure destroy the federal testimonial privilege? Our answer is "no." We hold that there is no dangerous-patient exception to the federal psychotherapist-patient testimonial privilege.
- Does the district court's error allowing Dr. Dieter to testify about what occurred in therapy require reversing Chase's conviction? We answer "no." Because the jury acquitted Chase of the threats to which Dr. Dieter testified and because, on this record, the outcome on the count of conviction would have been the same without her testimony, we hold the error was harmless.

Public Law 107-56

- "**U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism (**USA PATRIOT ACT**) Act of 2001"
  - Sec. 215. Access to Records and Other Items Under the Foreign Intelligence Surveillance Act (FISA)

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Public Law 107-56

- **Sec. 501. Access to Certain Business Records for Foreign Intelligence and International Terrorism Investigations.**
  - (a)(1) The Director of the Federal Bureau of Investigation or a designee … may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities….
  - (c)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified…
  - (2) (d) No person shall disclose to any other person (other than those … necessary to produce the tangible things…) that the FBI has sought/obtained … things…
  - (e) A person who…produces … things under an order … section shall not be liable to any other person…

United States of America v. Theresa Marie Squillacote (2000). 221 F.3d 542.

- Theresa Marie Squillacote (AKA: Tina, Mary Teresa Miller, The Swan, Margaret, Margit, Lisa Martin, and her husband, Kurt Stand; convicted of espionage.
- For 550 days the FBI maintained secret electronic surveillance of the couple's bedroom, and intercepted telephone calls with her psychotherapist (Jose Apud, MD), and attempted to lure the woman into damaging disclosures.

Theresa Squillacote & Kurt Stand

- **Theresa** - born in Chicago in November 1957, grew up in Wisconsin as part of a middle- to upper-class family of Italian, Polish and Ukrainian descent.
- Despite physical handicaps, linked to maternal Thalidomide use, Theresa earned a master's degree at the University of Wisconsin, and a law degree from Catholic University in Washington, DC.
- **Kurt** fled from Germany during Hitler's reign, but maintained contacts with friends in East Germany. In the 1970s, he began working for the East German intelligence agency. His work focused on recruiting agents in the USA. In 1981 he recruited Theresa. They married in 1983.

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United States of America v. Theresa Marie Squillacote (2000). 221 F.3d 542.

- Theresa Marie Squillacote served as a senior staff attorney in the office of the Deputy Undersecretary of Defense for Acquisition Reform until January 1997. Prior to her Pentagon assignment, she worked for the House Armed Services Committee.
- Kurt Alan Stand worked as a regional representative of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Association.

FBI BAP Advice…

- An FBI Behavioral Analysis Program team (BAP) drafted a personality report for use in the investigation based on her conversations with her psychotherapists.
- The BAP noted that she had depression, took medication, and had "a cluster of personality characteristics often loosely referred to as 'emotional and dramatic."
- The BAP team recommended taking advantage of Squillacote's "emotional vulnerability," and described the type of person to whom she might pass on classified materials.

FBI BAP Advice…

- "LS ignores and neglects her children; her clandestine activities take precedence in her life. She suffers from cramps and is taking the antidepressants *Zoloft* and *Diserel*.
- LS has wide mood swings. She has dependent childish relationships with men. She is totally self-centered and impulsive. She has no concern for ethics, loyalty or most other moral reasoning."

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BAP Advice…

- Because of the above traits—
  - It is most likely that LS will be easily persuaded if an approach is made to her that plays more to her emotions.
  - The type of UCA (undercover agent) who approaches her will be very important. He might be depicted as the son of communists who left for South Africa in the late 1940s or early 1950s.
  - The UCA should make a friendly overture by bringing her a personal gift such as a biography, which is her favorite type of book.
  - The UCA would act professional and somewhat aloof yet responsive to her moods.

BAP Advice…

- The initial meeting should be brief and leave LS beguiled and craving more attention.
- Subsequent meetings should take place in expensive restaurants.
- She should be asked what she thinks but not allowed to dominate either conversation or meetings.
- Once the subject becomes dependent on the UCA, then she can be encouraged to talk about her previous contacts and associates to determine the extent of her current and past espionage activity."

Coerced Treatment with Rx Meds

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Sell v. United States, 539 U.S. 166 (2003)

- Charles Sell, a dentist charged with committing 63 counts of Medicaid fraud, was determined by psychiatric evaluation as incompetent to stand trial. The government psychiatrists recommended psychoactive drugs to restore competency. Having experienced negative reactions to such drugs in the past, Sell refused. As a result, he was incarcerated in a forensic mental institution for 7 years, a longer period of time than the maximum sentence for the crime with which he was charged.
- On June 16, 2003, Justice Breyer delivered the 6-3 Supreme Court decision: "We conclude that the Constitution allows the Government to administer those drugs, even against the defendant's will, in limited circumstances, that is, upon satisfaction of conditions that we shall describe. Because the Court of Appeals did not find that the requisite circumstances existed in this case, we vacate its judgment."
- Sell won his right to refuse to take psychoactive drugs, but his victory seemed a hollow one at substantial cost.

Health Insurance Portability and Accountability Act (HIPAA)

Kennedy-Kassenbaum Act of 1996

AKA: 45 C.F.R.160

Privacy Rule Basics

- Original purpose was to protect Americans from losing their health insurance.
- Congress encouraged electronic transmission of health information to third party payors to increase efficiency, protect privacy and create uniform standards.
- December 28, 2000, HHS (Clinton administration) issued administrative rules to implement HIPAA. The Bush administration delayed then accepted rules with changes.

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Privacy Rule Terminology

- Protected Health Information (PHI)
  - Personally identifiable information that is created or received by a health care provider that relates to physical or mental health of an individual
- Health Care
  - Care or services related to the health of an individual…including but not limited to …preventative, diagnostic, therapeutic …care and counseling, service, assessment or procedure with respect to the physical or mental condition, or functional status, of an individual…"

Privacy Rule Requirements

- Privacy Rule allows disclosure of protected information for treatment, payment and health care operations with notice and good faith attempt to gain patient consent.
- State law requirements to obtain informed consent before releasing such information remain in effect.
- All other uses or disclosures require an Authorization

Privacy Rule Basics:

- Psychotherapist-Patient Privacy Protected in 3 ways:
  - Minimum Necessary Disclosure
  - State Law Pre-emption
  - Special Protection given to "Psychotherapy Notes."

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Minimum Necessary Disclosure

- HIPAA requires we limit 3rd party submissions to the minimum information necessary to conduct the activity for which the data were requested.
- Applies to information that can be disclosed without patient authorization.
- Insurers/MCOs can still require information necessary to establish medical necessity as a condition of coverage.

Minimum Necessary Disclosure

- Protection of information depends on who defines what "minimum necessary" means.
  - The 'minimum necessary requirement should be interpreted most favorably to the patient to preserve the privacy of records when disclosed to [MCOs] for [TPO].
- Power to deny payment leaves MCO's in control of definition of "minimum necessary."
- Conflict between interpretations will probably only be resolved through litigation.

Privacy Rule Basics: State Law Preemption

- The privacy rule is intended to serve as minimum level of privacy and patient autonomy protection.
- It only takes precedence over state laws that provide less privacy protection or that provide patients with less access and control over PHI.

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Psychotherapy Notes

- Mental health information is given special protection under the privacy rule.
- This is accomplished by dividing Mental Health Information into two categories:
  - Protected Health Information (PHI)
    - Referred to as the "Clinical Record"
  - Psychotherapy Notes

What goes in the "clinical record?"

- The following information, if kept, must rest in the Clinical Record
  - 1. Medication prescription and monitoring
  - 2. Counseling session start and stop times
  - 3. Modalities and frequencies of treatment
  - 4. Results of clinical tests (including raw test data)
  - 5. Summaries of:
    - a. diagnosis
    - b. functional status
    - c. treatment plan
    - d. symptoms
    - e. prognosis
    - f. progress to date

What are "psychotherapy notes?"

- Actual language of rule on psychotherapy records or notes :
  - "Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individuals medical record."

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Psychotherapy notes: The HHS narrative

"The rationale for providing special protection for psychotherapy notes is not only that they contain particularly sensitive information, but also that they are the personal notes of the therapist, intended to help him or her recall the therapy discussion and are of little use or no use to others not involved in the therapy. Information in these notes is not intended to communicate to, or even be seen by, persons other than the therapist. Although all psychotherapy information may be considered sensitive, we have limited the definition … to only that information that is kept separate by the provider for his or her own purposes. It does not refer to the medical record and other sources of information that would be normally disclosed for [TPO]."

Must we keep "psychotherapy notes?"

- No, we are not legally or ethically required to keep psychotherapy notes; they are completely optional.
- The decision can vary from patient to patient, and from session to session, depending on the facts and circumstances of the case.
- Many psychologists will elect to keep one set of records to minimize complexity.

More on psychotherapy notes

- Must be kept separately from basic record.
- Are not a substitute for individual session notes.
- Cannot be released without patient authorization.
  - This includes consultations with other providers
- Patient authorization cannot be required as a condition of insurance coverage or as part of managed care utilization review requirements.
- Cannot include raw test data.

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HIPAA privacy and security violations cost Seattle company $100,000

- DHHS has settled complaints over breaches of health information privacy and security rules by a Seattle home health care company.

  Health records of more than 386,000 patients were compromised, according to an HHS news release. Under the first-of-its-kind agreement, Providence Health & Services of Seattle has paid $100,000 and promised to take steps to ensure further breaches do not happen.

  The agreement labels the $100,000 payment a "resolution amount." "Providence's cooperation with [HHS offices] allowed HHS to resolve this case without the need to impose a civil monetary penalty," the news release states.
- http://www.govhealthit.com/online/news/350464-1.html

Money Matters & Managed Care

- Clients should be informed about fees, billing, collection practices, and other financial contingencies as a routine part of initiating the professional relationship. This information should also be repeated later in the relationship if necessary.
- Mental health service providers should carefully consider the client's overall ability to afford services early in the relationship and should help the client to make a plan for obtaining services that will be both clinically appropriate and financially feasible. Encouraging clients to incur significant debt is not psychotherapeutic. In that regard, therapists should be aware of referral sources in the community.

- Therapists ideally perform some services at little or no fee as a pro bono service to the public as a routine part of their practice.
- Relationships involving kickbacks, fee splitting, or payment of commissions for client referrals may be illegal and unethical. Careful attention to the particular circumstances and state laws will be important before agreeing to such arrangements.
- It is important for therapists to pay careful attention to all contractual obligations, understand them, and abide by them. Similarly, therapists should not sign contracts with stipulations that might subsequently place them in ethical jeopardy.
- Therapists may be held responsible for financial misrepresentations effected in their name by an employee or agent they have designated (including billing and collection agents). They must, therefore, choose their employees and representatives with care and supervise them closely.

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- In dealing with managed care organizations, mental health providers should adhere to the same standards of competence, professionalism, and integrity as in other contexts. Heightened sensitivity should focus on the potential ethical problems inherent in such service delivery systems where profit may trump client welfare.
- Third party payers will put pressures on practitioners to meet their needs in ways that do not necessarily hold the rights of individual clients paramount. In such instances ethical clinicians will act in the best interests of their clients.
- In all debt collection situations, therapists must be aware of the laws that apply in their jurisdiction and make every effort to behave in a cautious, businesslike fashion. They must avoid using their special position or information gained through their professional role to collect debts from clients.

The Pay for Performance dilemma

- Asking clients to rate practitioners or report on their symptom status to insurers as a means for determining reimbursement to providers.
- Provider incentives for presenting reporting forms to clients.
- The BCBSMA adventure

Non-Traditional Practice…

"I wasn't acting as a licensed practitioner when I did that (whatever made you unhappy with me)!"

- Coaching
- Consulting
- Dispute Resolution
- Parent Coordination

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What is a “Life Coach?”

- A survey of Internet sites reveals there may be as many as 30 different kinds of executive, corporate and personal development coaches specializing in:
- Business
- Career development
- Diet and fitness
- Divorce
- Romance
- Parenting, business and
- There are also coaches who assist people newly diagnosed with cancer, for children, coaches for people and their pets.

The industry is not regulated

- The 12-year-old International Coach Federation estimates there are 30,000 coaches in the world (about 10,000in North America) and about a third are federation members.
- This represents a 3-fold increase since 2000. And according to the Business and Economic Review, "In 2006, PriceWaterhouseCoopers (PWC)found professional coaching to be a $1.5 billion (U.S.) global industry."
- Some coaches are in private practice, some work in the human resources departments of large companies, some work for EAPs.
- However--- if you are a licensed mental health professional, you cannot escape responsibility by claiming, “I was being a coach, not a psychologist / social worker / counselor when I did that.”

Hot Topics and Complex Dilemmas

Telepsychology

Multicultural Competence

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What modalities will you use?

- Client communications telemetry modality continuum
  - Voice and visual
  - Voice only
- Cordless, Cellular, VOIP (Voice over Internet Protocols)
- Electronic mail
  - Routine messages
  - Attachments and records transmission
  - "Push" mail to HHDs (hand held devices)

What rules, laws, or principles apply?

- Who regulates the practice?
  - Where do the services take place?
- What are (or will be the standards of care?

Who's monitoring?

Carnivore and Echelon!

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Electronic hazards: Interception or capture

- Real-time unauthorized monitoring potential
- Capture potential
  - Authorized or surreptitious capture (recording)
  - Subsequent unauthorized viewing
- National security and law enforcement applications
  - Electronic Privacy Information Center
  - FBI Carnivore
    - www.epic.org/privacy/carnivore

Carnivore, Echelon, and Tempest

- Carnivore is an e-mail wiretap system developed and used by the FBI to read messages being circulated amongst suspected criminals and terrorists... and everybody else.
- Echelon refers to a global spy system which can capture and analyze virtually every phone call, fax, email and telex message sent anywhere in the world. Every word of every message in the frequencies and channels selected at a station is automatically searched.
- Tempest is a code word for electromagnetic snooping. It's usual for military electronics to be "Tempest hardened" in order to shield them from high-tech spying, disruptive interference, and EMPs.

Ethical Issues in Telepsychology

- Telepsychology includes use of telecommunications and information technology to provide access to psychological assessment, intervention, consultation, supervision, education, and information across distance.
- The APA *Ethical Principles of Psychologists and Code of Conduct* (2002) attempted to address this as part of the scope of context for practice of psychological services:

  "The Ethics Code applies to these [professional] activities across a variety of contexts, such as in person, postal, telephone, Internet, and other electronic transmissions."

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Ethical Issues in Telepsychology

- The mode of communication does not alter the applicability of ethical standards and may offer benefits to some clients, especially regarding easy of access and convenience.

Consent and Confidentiality Issues

- Consent documents for such services should include data regarding:
  - The nature and course of treatment of services offered (e.g. therapy, consultation, supervision, or assessment) and information on fees, involvement of third parties, and opportunity for the client/patient to ask questions.
  - Disclosure of the differences between the online service being offered and in person services.
  - Ensure that patient/clients are aware of limitations of confidentiality (e.g. duty to warn, mandatory reporting laws), procedures that protect confidentiality and threats to confidentiality unique to electronic transmission.
    - The public nature of the Internet and wireless phone issues.
  - Ensure that the client has legal competence to consent and assure yourself of their identity and location (e.g. via use of an appropriate ID).

- Describe any security steps employed by the therapist and the actions the client/patients can take to increase security.
- Identify the conditions in which information will be released to third parties.
- As an emerging practice domain, therapists should discuss risks and limitations inherent the electronic modalities with clients.
- Offer an clear explanation of the process of therapy or services offered including response time, frequency and duration of response, and other such protocol issues.
- Identify procedures for emergencies including relevant contact people, local emergency services or hospitals, etc.
- Recognize your own risks and set rules (e.g., Can the client post your therapy session on U-Tube?).

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Clinical Competence In Telepsychology

- Given that therapists typically acquire critical information through the initial in-person intake---
  - assessing mental status
  - making a preliminary diagnosis
  - developing an initial treatment plan
- How do therapists develop or transfer these skills to online practice?

Competence Recommendations

1. Conduct a clinical intake interview to determine appropriateness of telepsychology service and the mental status competence of the client/patience. Consider requiring an in person intake.
2. Consider the importance of competence through the electronic medium in being able to diagnosis accurately, assess a risk to harm to self or others', and to activate emergency services.
3. Consider one's own scope of competence in this emerging area of practice and assess any further needs for education and training (e.g. technology skills).

More Competence Recommendations

4. Consider the appropriateness of the client's diagnostic classification and other variables in the suitability for online services:
   Those not appropriate for online services may include individuals with psychotic disorders, severe personality disorders, suicidal or homicidal risks, or bipolar disorders.
5. Be aware of cultural, ethnic, language, gender, and other factors that could alter either effectiveness, competence, or outcome.

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Legal and Regulatory Issues

- Become familiar with the laws and regulations in jurisdictions of practice including reporting laws such as child or elder abuse.
- Be mindful that all ethical standards of one's professional association apply across all modes of service provision.
- Emergency Services - Make needed resource connections in agencies local to the client/patient in case mandatory reporting or emergency services must be employed.
- Beware that providing services to individuals outside of one's licensed jurisdiction to practice is a significant risk.

Recommendations: Recordkeeping

1. **Online psychotherapy produces transcripts of communications. Conventionally, the therapist decides how to generate a record. Online services will require the therapist to (a) decide what to retain for records and to discuss with the client/patient the confidentiality and access to records risk in either or both parties having a transcript of sessions.**
2. **Be aware that just as case notes can be misinterpreted, full transcripts of sessions disclosed at a later time in a non-therapeutic context can be damaging to the client and create risk for the therapist.**

Multicultural Competence

Are you competent to treat today's urban teens and young adults?

Are you ready for a quiz?

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Multicultural Guidelines

- The basic premise of the development of the Multicultural Guidelines is that individuals exist in social, political, historical, and economic contexts
- As psychotherapists we are increasingly called upon to understand the influence of these contexts on individuals' behavior

Multicultural Guidelines

- Consider
  - the continuing evolution of the study of psychotherapy
  - changes in society-at-large
  - emerging data that society itself has marginalized or disenfranchised individuals based on their ethnic/racial heritage and social group identity or membership

Multicultural Guidelines

- These Guidelines reflect knowledge and skills needed for the profession
  - There have been dramatic historic sociopolitical changes in U.S. society, as well as needs from new constituencies, markets, and clients.

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Multicultural Guidelines

- The Guidelines reflect
  - the continuing evolution of the study of psychology
  - changes in society-at-large
  - emerging data that Psychology itself has marginalized or disenfranchised individuals based on their ethnic/racial heritage and social group identity or membership

APA'S Multicultural Guidelines Paraphrased

Guideline: Psychotherapists must recognize that, as cultural beings, they may hold attitudes and beliefs that can detrimentally influence their perceptions and interactions with individuals who are ethnically and racially different from themselves

APA'S Multicultural Guidelines Paraphrased

Guideline: We must recognize the importance of multicultural sensitivity/ responsiveness, knowledge, and understanding about ethnically and racially different individuals.

- The challenge is learning about cultural groups without stereotyping

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Developing the Alliance

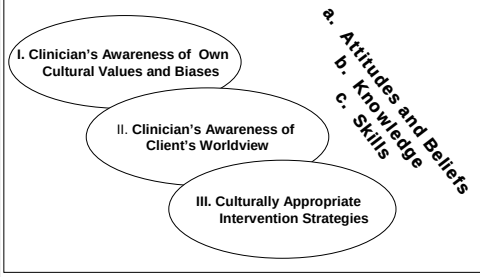
- Clinicians must tailor the relationship to the client's interpersonal and developmental needs.
- In addition to self-awareness, we must continuously evaluate our theories, assumptions, practices, and clinical skills to correctly apply culturally competent interventions to accommodate the needs of the wide variety of clients with whom we work

APA'S Multicultural Guidelines Paraphrased

Guideline: When teaching psychotherapy, we should employ the constructs of multiculturalism.

- Syllabi should be competency-based
- Educators should attend to multicultural considerations--race and ethnicity and the intersection with other factors, e.g., age, gender, religion, and sociopolitical & historical matters.

Multicultural Counseling Competencies: Domains of Education and Practice



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BECOMING CULTURALLY COMPETENT

- **Think outside your own box.** Consider how our perspectives affect our understanding of other cultures and avoid making assumptions about others based on our own experiences. Becoming culturally aware starts with understanding your own cultural background.
- **Experience culture.** Consider experiential ways you can learn about other cultures and endeavor to participate in activities that may not be familiar to you, such as taking part in social and educational activities such as viewing films and reading books, attending faith-based services.
- **Engage in learning.** It is important to recognize that your knowledge is limited to your own experiences. Entering the communications process with an open mind and being fully informed will help you to effectively share your message.
- **Invite others' opinions.** People feel respected when others are genuinely interested in learning about their interests and perspectives on a topic.

BECOMING CULTURALLY COMPETENT

- **Tune in to non-verbal behaviors.** Physical behaviors can sometimes provide more details about how someone is reacting to a situation than what they may be comfortable telling you.
- **Expand your comfort zone.** Are there individuals or cultural groups that you have less experience working with? Acknowledging this and making an effort early on to learn as much as possible about this group can help build your confidence and benefit your outreach.
- **Respect language preferences.** It's often difficult to respect language unknown to you; but, effort gives the right signals.

Questions You Asked

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- How can an Employee Assistance Program best design a Release of Information that limits disclosure of drug and alcohol information (42 C.F.R. Part 2), and at the same time, satisfy Human Resources' or a Supervisor's request for "compliance" feedback?

More precise framing:

- What expectations exist among the different parties (i.e., client, therapist, and employer's representative)?
- Who communicates the expectations; how and when?
- What contingencies apply?
  - Has the employer set some compliance contingencies with the employee?
  - If so, are the contingencies lawful and has the employee agreed to them ?
  - Is the feedback request consistent with the role of the therapist?

- What are the requirements for a "Witness" on a signed Release of Information? Is one always necessary?

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Do I have to wear the seat belt?

- Having a witness can serve to protect all parties in the event of a subsequent disagreement or memory lapse, particularly if the person authorizing the release has a mental illness or other impairment.
- The witness should be a competent adult and identifiable (e.g., printed name in addition to signature, address, relationship to signer, etc.).
- The witness should not accrue personal benefit as a result of the document being witnessed.

Making Ethical Decisions

Strategies and Case Vignettes

Steps in Ethical Decision Making
(per Pope & Vasquez and Koocher & Keith Spiegel)

- Does the situation involve ethical consideration and decision-making?
  - What is the clearest possible statement of the ethical question or issue? Are there other valid ways to define the situation?
- Review relevant formal ethical standards.
  - Do the ethical standards speak directly or indirectly to this situation? Are the ethical standards ambiguous when applied to this situation? Does this situation involve conflicts within the ethical standards or between the ethical standards and other (e.g., legal) requirements or values?
- Review relevant legal standards.
  - Do statutes, regulations, or case law speak directly or indirectly to this situation? Do the legal standards speak to this situation in a way that is clear? Are there conflicts within the legal standards or between the law and other requirements or values? Would consulting an attorney help?
- Who, if anyone, is the client**?**
  - Is there any ambiguity, confusion, or conflict about who the client is (if it is a situation that involves a therapist-client relationship)? If one person is the client and someone else is paying your fee, is there any divided loyalty, any conflict that would influence our judgment?
- Anticipate who else will be affected by your decision.
  - No one lives in a vacuum. Rarely will our ethical decisions affect only a single client or a single colleague and no one else. How you determine the most ethical path may help decide whether the family lives or dies.

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Steps in Ethical Decision Making

- Assess your relevant areas competence-and of missing knowledge, skills, experience, or expertise-in regard to the situation.
  - Are you well-prepared to handle this situation? What steps, if any, could you take to make yourself more effective? In light of all relevant factors, is there anyone else who is available that you believe could step in and do a better job?
- Review the relevant research and theory.
  - Does research or theory helps to conceptualize, understand, or respond to the situation? Consider reaching beyond your own theoretical orientation.
- Consider how, if at all, your personal feelings, biases, or self-interest might affect ethical judgment and reasoning.
  - Does the situation make you angry, sad, or afraid? Do you find yourself eager to please someone (or an organization)? Do you desperately want to avoid conflict?
- Consider what effects, if any, of social, cultural, religious, or similar factors on the situation and on ethical responses.
  - The same act may take on sharply different meanings in different societies, cultures, or religions. What seems ethical in one context may violate fundamental values in another society, culture, or spiritual tradition. Does the situation include social, cultural, religious, or similar conflicts?
- Consider obtaining consultation.
  - Is there anyone who would likely provide useful consultation for this specific situation? Is there an acknowledged expert in the relevant areas? Is there someone whose perspective might be helpful? Is there someone whose judgment you trust?
- Develop alternative courses of action.
  - What possible ways of responding to this situation can you imagine? What alternative approaches can you create?

Steps in Ethical Decision Making

- Evaluate the alternative courses of action.
  - What impact is each likely to have--and what impact could each have under the best possible and worst possible outcome that you can imagine--for each person who will be affected by your decision? What are the risks and benefits?
- Try to adopt the perspective of each person who will be affected.
  - Put yourself in the shoes of those who will be affected by your decisions
- Decide what to do, and then review or reconsider the decision.
  - Once you have decided on a course of action, you can--if time permits--rethink it. Sometimes simply making a decision to choose one option and exclude all others makes you suddenly aware of flaws in that option.
- Act and assume personal responsibility for your decision.
  - Once the decision is made, acting is relatively easier. When risks or costs overwhelm us, it is a natural temptation to blur or evade personal responsibility.
- Evaluate the outcome.
  - What happened when you acted? To what extent, if at all, did your action bring about the expected consequences? To what extent, if at all, were there unforeseen consequences?
- Assume personal responsibility for the consequences of your actions.
  - If your response to the situation now seems-with the benefit of hindsight-to have been wrong or has caused negative consequences, what steps, if any, do you need to take to address the consequences of your decision and action?
- Consider implications for preparation, planning, and prevention.
  - Did this situation and the effects of your response to it suggest any useful possibilities in the areas of preparation, planning and prevention? Are there practical steps that would head off future problems or enable you and others to address them more effectively?

Case vignette 1: *Mandated child abuse reporting*

- Martha Harms has been a licensed mental health professional for nearly a decade. As she arrived at her office early this morning, the phone was ringing. Speaking in a tremulous voice, the caller stated: "I was given your name by my internist, Dr. Williams. I think my husband may be abusing our 5-year-old sexually. Can you help?" After a few minutes of conversation, Martha offers to schedule a prompt appointment. The caller interrupts and asks, "You won't have to report this will you?" As a mandated reporter under the state's child protection statute, Martha has no choice but to inform the authorities; she tells the caller, who immediately hangs up. Suddenly, Martha realizes that she does not have the name although her phone has logged a caller ID number. She contacts the internist, Dr. Williams, who says that he made the referral but: “Does not want to get involved."

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Case vignette 2: *Confidentiality & the potential hazard (part 1)*

- After I8 months in an abusive relationship, Cindy fled the apartment she had shared with Rocky Brute. Her relationship with Rocky was pleasant enough at the outset, but it turned abusive after the two moved in together. On three occasions over the last year, Cindy was treated in emergency rooms for bruises, scrapes, a mild concussion, and a broken nose. At first she thought that she had somehow provoked these responses from Rocky, but has now came to see the relationship as abusive, thanks to the help and support she got from Dr. Wilson at the Center City Women's Haven. Cindy now lives in a safe house for battered women, affiliated with the Women's Haven Outpatient Clinic, and continues in psychotherapy with Dr. Wilson. Although Rocky threatened to "teach her a lesson" if she ever disclosed the beatings, Cindy feels safe 4 weeks after her exit from the apartment and wants to get a "new start." She is unwilling to get involved in any prosecution of Rocky, and she wants to leave that part of her life behind.

Case vignette 2: *Confidentiality & the potential hazard (part 2)*

- Another of Dr. Wilson's clients at the Women's Haven Outpatient Clinic, Agnes, suffered spousal abuse for several years. Two years ago she was found not guilty of manslaughter following her fatal shooting of the abusive husband after an vicious beating. Filled with self-doubt and long-standing emotional trauma, Agnes has relied on Dr. Wilson's support for many months, but at today's session she has good news to share. Agnes tells Dr. Wilson, I've finally met Mr. Right! You know, I thought I'd never be ready for another relationship, but this man has swept me off my feet. He's a real romantic and treats me like a queen. It's ironic. He's got a really funny name, Rocky Brute. Can you believe it! Dr. Wilson is suddenly in possession of confidential information from one client that might be of particular interest to another client. Both of Dr. Wilson's clients have particular vulnerabilities. In addition, Agnes may be at some risk from Rocky and he from her if history has any predictive value regarding future behavior.
- What are Dr. Wilson's ethical obligations? How should these be discharged?

Case vignette 3: *The Multiple Role Surprise*

- Robin Roberts, a licensed mental health professional, has treated Peter Pilfer, a certified financial planner with Perennial Premium Investments (PPI) nor nearly 7 months. Mr. Pilfer sought treatment because of high levels of anxiety and work-related stress. In the course of treatment, Mr. Pilfer recently reported feelings of guilt and anxiety related to several very risky investment vehicles in high risk mortgages that his company is aggressively marketing. In passing, he refers to a "a mega scam involving Peruvian llama futures," devised by him and his PPI boss, Michael Milkthem. Mr. Pilfer worries that he and Milkthem may soon face indictment for security fraud. Roberts suddenly remembers that 6 weeks earlier she invested half of her retirement savings in Peruvian llama futures with a highly recommended broker named Milkthem.

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Case vignette 4: *Teletherapy Trouble*

- Dr. Neuro Transmitter, a psychotherapist in Lancaster, PA provides services through an online, real-time consultation service known as CyberShrink, LLC of Dallas, TX. He is paid by the hour for his consultation services to subscribers who are billed by credit card through CyberShrink. One afternoon he logs on and is connected via private "chat channel" to a new subscriber to the service. She is Ann Hedonia of Simi Valley, CA. Ten minutes into the session, Dr. Transmitter recognizes that Ms. Hedonia is seriously depressed with suicidal ideation and is feeling *close* the edge of her ability to cope. He gently suggests that perhaps she ought to think about hospitalization near her home. Ms. Hedonia replies, "Even you don't care about me! That's it. I'm going to do it!" and disconnects.

Case vignette 5: *Unanticipated Propinquity* *(part 1)*

- Marge N. O'Vera has a reputation in the community as a thoughtful, caring, and highly ethical psychotherapist. For more than a year she has treated Greta Grievance, helping her to cope with emotional and financial insecurities in the aftermath of a highly contentious divorce. During a therapy session, Ms. Grievance tells O'Vera that she has decided to sue the attorney who represented her during he divorce. Ms. Grievance believes that he did not represent her interests effectively and that she foolishly took his advice in accepting a very inferior settlement. She has retained another attorney who, she tells O'Vera. will soon call to request information on the stress of the divorce and Ms. Grievance's continuing need for therapy. Grievance has signed a release and Dr. O'Vera will be asked to testify as to the harm caused to her client and resulting treatment expenses.

Case vignette 5: *Unanticipated Propinquity* *(part 2)*

- As Ms. Grievance gets up to leave, she tells Dr. O'Vera. "I'm so glad you'll help me teach that awful Tom Tort a lesson." As she hears the name of Attorney Tort for the first time, Dr. O'Vera begins to sweat. Thomas Tort, attorney at law, is also a client of hers. She had no idea that he had been Ms.Grievance's divorce lawyer. She has treated Mr. Tort for recurring major depression over several years and knows that he probably was sufficiently depressed so as to compromise his professional work at the time he represented Ms.Gricvance.
- When she is named as an expert witness far the plaintiff, Attorney Tort will learn that his therapist was also treating Ms. Grievance. At the same time, her duty of confidentiality precludes her informing others (including Ms. Grievance) that Tort is also her client. What is Dr. O'Vera to do?