

1 **Law and Ethics: An Ethical Model for Working in Complex Situations**

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- In a world where celebrity equals talent
- where make believe is called reality
- it is most important to have real love, truth and stability in your life.
- Bernie Brillstein

3 **AGENDA**

- **9:00-10:30 What's new 2008-2009**
- **10:30-10:45 BREAK**
- **10:45 -12:00 Applying an Ethical Model to Clinical Work**
 - The Difference between Ethics and Rules
 - Ethical Principles and Ethical Standards
 - Applying Ethics to Clinical Practice
 - Managing Risk by Practicing Clinically
- **12:00-1:00 Lunch (Turkey, tuna, grilled chicken, perhaps a cold drink and some chips would be nice.).**

4 **AGENDA**

- **1:00-2:30 Applying Ethics Codes to Professional Situations:** Vignettes and Discussion.
 - Ethical Responsibilities and Mandated Reporting
 - The Lost Laptop
 - Informed Consent
- **2:30-2:45 BREAK**
- **2:45-3:50 Ethical Practice and the Internet**
 - Telemedicine
 - MySpace, Listservs, email and Blogs

5 **Disciplinary Actions**

- Driving in a willful or wanton way while fleeing from a pursuing officer. Drove a vehicle while under the influence of alcohol.
- Removed confidential records and data from a private non-profit agency, secretly worked with the girls' social workers to eventually become a foster parent to both children.
- Respondent provided psychotherapy as a result of the parents being engaged in a custody dispute. Respondent wrote a declaration. The father never agreed to waive the confidentiality of his therapy.

6 **What's New**

- CAMFT ETHICS CODE-REVISED
- **Mandatory Reporters must make Mandatory Reports**
 - A mandated reporter who fails to report child abuse is guilty of a misdemeanor punishable by up to six months confinement and/or a fine of \$1,000.
 - A mandated reporter who fails to report child abuse, and that abuse results in death or great bodily injury, is punishable by up to one year confinement and/or a fine of \$5,000.

7 **CAMFT ETHICS CODE-REVISED**

- **1.4. 7 Electronic Therapy**
 - When patients are not physically present ...take extra precautions to meet their responsibilities to patients.
- **1.5.1 Risks And Benefits**
 - Inform patients of the potential risks and benefits of therapy when utilizing novel or experimental techniques.
- **1.5.4 Limits Of Confidentiality**
 - Inform patients (about) exceptions such as child and elder abuse reporting patients dangerous to themselves or others.
- **1.17 Third Party Payer**
 - Advise patients of the information that will likely be disclosed when submitting claims.

8 ☐ CAMFT ETHICS CODE-REVISED

- **1.5.4 Limits Of Confidentiality**
 - Inform patients (about) exceptions such as child and elder abuse reporting patients dangerous to themselves or others.
- **1.17 Third Party Payer**
 - Advise patients of the information that will likely be disclosed when submitting claims.
- **1.5.2 Emergencies/Contact Between Sessions**
- **Conflicts of Interest/Dual Relationships**
 - Carefully consider potential conflicts when providing different treatment modalities concurrently or sequentially to a patient; Section 8.4 is a new standard concerning dual roles and the need to avoid providing treatment and evaluations for the same patients in legal proceedings

9 ☐ CAMFT ETHICS CODE-REVISED

- **Conflicts of Interest/Dual Relationships**
 - Carefully consider potential conflicts when providing different treatment modalities concurrently or sequentially to a patient
 - Avoid providing treatment and evaluations for the same patients in legal proceedings
 - NON-THERAPIST ROLES: (managed care utilization review, consultation, coaching, adoption service, or behavior analysis), act solely within that role and clarify how that role is distinguished from the practice of marriage and family therapy.

10 ☐ CAMFT ETHICS CODE-REVISED

- **Conflicts of Interest/Dual Relationships**
 - **8.3 Conflicting Roles** Whenever possible, marriage and family therapists avoid performing conflicting roles in legal proceedings and disclose any potential conflicts.
 - **8.9 Consequences of Changes in Therapist Roles** Inform the patient of any potential consequences of therapist-client role changes ie. child's therapist, family's therapist, couple's therapist, individual's therapist, mediator, evaluator, and special master.

11 ☐ Professional Competence

- **3.5 Staying Current** Stay abreast of changes in the field, maintain relevant standards of scholarship, and present accurate information.
- **8.7 Opinions About Persons Not Evaluated** Only express professional opinions about clients treated or examined.
- **8.8 Custody Evaluators** Provide such services only if they meet the requirements established by pertinent laws, regulations, and rules of court.
- **8.10 Familiarity with Judicial and Administrative Rules** Marriage and family therapists, when assuming forensic roles, are or become familiar with the judicial and administrative rules governing their roles.

12 ☐ CAMFT ETHICS CODE-REVISED

- **EXPERT WITNESSES:** Base their opinions on appropriate data, and are careful to acknowledge the limits of their data or conclusions in order to avoid providing misleading testimony or reports.
- **8.4 DUAL ROLES:** Avoid providing both treatment and evaluations
- **8.5 IMPARTIALITY:** Remain impartial and do not compromise their professional judgment or integrity.
- **8.6 MINORS AND PRIVILEGE:** Confirm the holder of the psychotherapist patient privilege on behalf of minor clients prior to releasing information or testifying.

13 ☐ What's New

- Civil Ethics Code 56.19,c.
 - Medical Information may be disclosed by a psychotherapist if the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.
- Permissible, not mandatory. Proceed with great care.

14 ☐ What's New

- AB1298-Effective January 2008
 - This bill requires notification of any breach of UNENCRYPTED personal information.
 - **PERSONAL INFORMATION** includes the individual's name and any of the following:
 - Any Medical Information
 - Social Security number,
 - Driver's license number or California Identification Card number.
 - Account number, credit or debit number, as specified.
 - Health insurance policy number or subscriber identification number or unique identifier.

15 ☐ What's New

- AB 525 (Chu) Child Abuse Reporting
 - Emotional abuse may be reported, but is not required to be reported.

- Knowledge of or reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage. Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior

16 What's New

- AB 525 (Chu) Child Abuse Reporting
 - Clarifies that confidentiality protections for mandated reporters also apply to those who make a permissible report of emotional abuse.
 - Permits those who report emotional abuse to receive the same feedback as they would when making a mandated report of child abuse upon a final disposition of a case.

17 What's New

- AB 2257 Maintaining Records
 - Requires psychologists to retain adult patient records for a minimum of 7 years, at least 7 years past age 18 for minors.
 - BBS Recommended: Maintain in manner consistent with other rules and guidelines
- SB 822 Immunity for supervisors
 - Grants immunity to supervisors of graduate students who communicate relevant information to the graduate program about a student's performance..

18 Understanding Ethical Principles

- Nash Movie

19 Applying an Ethical Model to Clinical Work

- The Difference between Ethics and Rules
- Ethical Principles and Ethical Standards
- Applying Ethics to Clinical Practice
- Managing Risk by Practicing Clinically

20 The Difference between Ethics and Rules

Ethics

Ideals

- Aspirational
- Reasonable
- Formulated for good,
- Utilizes creativity

Rules

- Rigid
- Based on fear of punishment
- Public exposure
- Guilt or shame

21 The Difference between Ethics and Rules

- Attempt to fulfill the highest ethical potential.
- Think through complex ethical dilemmas, rather than search for solutions primarily to avoid sanctions or obey rules.
- Promote exemplary behavior, not minimal standards.

Donner, M. B., VandeCreek, L., Gonsiorek, J.C., Fisher, C.B. (2008). Balancing confidentiality: Protecting privacy and protecting the public. *Professional Psychology: Research and Practice*. Vol 39(3) 369-376

22 Ethical Principles and Ethical Standards

- Ethics is a term for understanding and examining perspectives of right and proper conduct.
- Codes of ethics provide principles, rules or guidelines to protect the public and the profession, a standard of behavior that guides professionals in their work.
- Ethical Principles are basic obligations to clients..

- Beneficence (promote the welfare of others), non-maleficence (avoid harming others).
- Justice (refrain from unfair discrimination).
- Respect for autonomy (encourage clients to make decisions about their health care).

23 Applying Ethics to Clinical Practice

- Ethics Codes and Regulations generally offer considerable flexibility.
- Clinical decision-making can be given priority with few exceptions:
- Example: Mandatory Reporting
 - Confidentiality applies even when making mandated disclosures.
 - It may be ethical to disobey a law, although the consequences can be significant. It is still a decision.

24 Applying Ethics to Clinical Practice

- Reflection Over Action
 - Therapist's subject to external demands frequently become anxious, angry, hostile or compliant.
 - External demands from the outside world may be treated as if they have no meaning.
 - An active engagement can turn a struggle about objectivity, rights and laws into a meaningful, collaborative encounter.

25 Applying Ethics to Clinical Practice

- Limit and contain the exceptions so that the integrity of the principle is maintained.
- Seek Consultation.
- Include the Patient in the Decision-making process.
- Provide Truly Informed Consent.

26 Managing Risk by Practicing Clinically

- Look to find a position somewhere between your own needs, the needs of the client and the needs of society.

27 Managing Risk by Practicing Clinically

- The Ethical Seminarian
- Seminarians on their way to give a lecture on the Good Samaritan were confronted with an coughing and groaning victim. Most stepped over or walked past.
- Why were the seminarians hurrying? The researchers concluded that it was because the experimenter, whom the subject was helping, was depending on him to get to a particular place quickly.

• From Jerusalem To Jericho: A Study Of Situational And Dispositional Variables In Helping Behavior" by John M. Darley & C.Daniel Batson. Journal of Personality and SocialPsychology", July, 1973, vol. 27, #1, pages100-108.

28 Managing Risk by Practicing Clinically

- In other words, he was in conflict between stopping to help the victim and continuing on his way to help the experimenter. This is often true of people in a hurry; they hurry because somebody depends on their being somewhere. Conflict, rather than callousness, can explain their failure.

• From Jerusalem To Jericho: A Study Of Situational And Dispositional Variables In Helping Behavior" by John M. Darley & C.Daniel Batson. Journal of Personality and SocialPsychology", July, 1973, vol. 27, #1, pages100-108.

29 ☐ Managing Risk by Practicing Clinically

- Generate alternative solutions to the dilemma.
- Consider the consequences of choosing each option.
- Consider: the economic, emotional, and social costs of each; the short-term, ongoing, and long-term effects, resource limitations, and the risks involved.
- Make a decision, even if it is to decide not to do anything. Implement the decision, and document the rationale for choosing it.

30 ☐ Managing Risk by Practicing Clinically

- Self Monitor
Adapted from How to Avoid Doing What You Ordinarily Would Not Do and Causing Harm: Ethical Decision-Making in Professional Practice Jan Sonne, Ph.D. and The California Psychological Association Ethics Committee, (2005)
- Are you competent to perform the professionals activities required in this situation?
- Are you suffering from personal, career, or work setting stress that may impact conduct?
- Are you seeing a particularly challenging client to whom you react with anxiety, sexual arousal, anger, irritation, sadness.

31 ☐ Managing Risk by Practicing Clinically

- Seek Consultation
- Ensure what laws apply and understand the consequences of following the law.
- Be sure you understand all your ethical obligations.
- Consider all alternatives to violating the law.
- Limit violations of law to the minimum necessary to achieve the goal.

• (Adapted from Knapp, S., Gottlieb, M., & Berman, J., (2006). When Laws and Ethics Collide: What Should Psychologists Do? Unpublished Manuscript).

32 ☐ Managing Risk by Practicing Clinically

- Formal codes and standards cannot take the place of an active, thoughtful, creative approach to our ethical responsibilities. They inform rather than determine. They can never substitute for thinking and feeling our way through ethical dilemmas, and cannot protect us from ethical struggles and uncertainty.
- Standards and codes may identify some approaches as clearly unethical and set forth essential tasks, but they cannot spell out the best way to accomplish those tasks with a unique client facing unique problems in a specific time and place with limited resources.

• Adapted from Pope, K.S., & Vasquez, M.J.T. (2007). *Ethics in Psychotherapy and Counseling: A Practical Guide, 3rd Edition*. San Francisco, C

33 ☐ Manage Risk by Practicing Ethically

- Establish relationships of trust.
- Uphold professional standards of conduct, clarify professional roles and obligations, accept appropriate responsibility for behavior
- Manage conflicts of interest that could lead to exploitation or harm.
- Consult, refer or cooperate with other professionals and institutions to the extent needed to serve the best interests of those with whom you work.

34 ☐ Manage Risk by Practicing Ethically

- Promote accuracy, honesty, and truthfulness in science, teaching, and practice.
- Do not steal, cheat, or engage in fraud, subterfuge, or intentional misrepresentation of fact.
- Keep promises and avoid unwise or unclear commitments.

35 ☐ Manage Risk by Practicing Ethically

- Exercise reasonable judgment and take precautions to ensure that potential biases, the boundaries of competence, and the limitations of expertise do not lead to or condone unjust practices.

- Be aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making.

36 ☐ How Bad Things Happen to Good People

- 1. Rules don't apply to because of special knowledge.
- 2. A special situation had arisen, so that the rules that apply don't apply under special circumstance.
- 3. The rules apply, the situation is not special, but the rule is only being bent a little.
- 4. The rule had been broken inadvertently, but since the rule had already been broken, there is no reason to turn back.

• Adapted from: Gottlieb, K. How Bad Things Happen to Good Analysts: A Panel Discussion. Scientific Meeting, December 10th, 2007. San Francisco Center for Psychoanalysis

37 ☐ Applying Ethics to Professional Situations

- Dear Michael
 - As a matter of course, I have not agreed to see children without the consent of both parents. I have thought this was an ethical requirement, although I have heard of therapists who do not follow this. I was asked this week if I would see children in a divorce case even if the father was unwilling to consent. What is the current wisdom regarding this? Is it unethical? Is it illegal? Is it merely foolish because of the possibility of a board complaint? Inquiring minds.....

38 ☐ Applying Ethics to Professional Situations

- Dear Michael
 - My office building was broken into and my password protected laptop stolen. The police stated that the hard-drive is usually cleansed of data and the laptop sold. There were no psychotherapy records, mostly psychological evaluations and my billing records.

39 ☐ Applying Ethics to Professional Situations

- Dear Michael
 - A client has told her therapist that her friend is being "pimped out" by her boyfriend. Is this a mandated CPS report?

40 ☐ Applying Ethics to Professional Situations

- Dear Michael
 - I'm wondering if you are aware of any specific regulations that apply to transporting clinical files. Some of our interns work at school sites and need to carry documents with client information on them back to the clinic for their supervisor to review.
 - One of my colleagues said that she had heard that per HIPPA, files need to be transported in a locked file, in a locked car trunk and could not be taken on a bus or kept on the seat of a car. Have you ever heard of such a regulation? Any thoughts on the matter?

41 ☐ Applying Ethics to Professional Situations

- Dear Michael
 - My client is telling me of others out in the community who are threatening members of his family. I've encouraged him to tell the police, but he won't. Am I mandated to report? Is it Tarasoff? The threats are indirect, like communications: "picture [person] in a coffin..."

42 ☐ Applying Ethics to Professional Situations

- Dear Michael
 - Last Friday my patient missed her session. She called to say she was driving to Humboldt to stay with her father. She sounded like she might be decompensating - flat affect, robotic voice, difficulty with reality testing. My question is whether you think it would be defensible ethically for me to contact my patient's father (he is listed as her emergency contact in my intake paperwork) to check on her whereabouts. I don't have a signed release from the patient about doing this, but I know she has a positive relationship with her father.

43 ☐ The Ethical Use of the Internet

- Telemedicine
- Listservs
- Email

44 ☐ The Ethical Use of the Internet

Adapted from Sullaway, M. "You've Got Email." The California Psychologist, October/November 2006.

- Email - A computer lets you make more mistakes faster than any invention in human history - with the possible exceptions of handguns and tequila. Ratcliffe, 1992

45 ☐ The Ethical Use of the Internet

Adapted from Donner, M.(2007) The Ethical Use of the Listserv: Privacy and Professional Conduct. The California Psychologist., November/December, 2..

- listservs & email
 - Ethics Code applies to all the professional activities “across a variety of contexts, such as in person, postal, telephone, Internet, and other electronic transmissions.”
 - Ethics Codes do not apply to purely private activities, however participating on a professional listserv where one identifies as an MHP should be considered a professional activity.

46 ☐ The Ethical Use of the Internet

Adapted from Donner, M.(2007) The Ethical Use of the Listserv: Privacy and Professional Conduct. The California Psychologist., November/December, 2..

- listservs & email
 - The APA Ethics Code notes that “When psychologists provide public advice or comment via print, internet, or other electronic transmission, they take precautions to ensure that statements (1) are based on their professional knowledge, training, or experience in accord with appropriate psychological literature and practice; (2) are otherwise consistent with this Ethics Code.”

47 ☐ The Ethical Use of the Internet

Adapted from Donner, M.(2007) The Ethical Use of the Listserv: Privacy and Professional Conduct. The California Psychologist., November/December, 2..

- listservs & email-Requests for Referrals
 - General information should be substituted for specific details. Requesting a referral for a 43 year old, white male patent attorney who is recently divorced, in a custody dispute with his attorney spouse with three young children ages 7, 9 and 13 might be “too much information.”
 - The request could be phrased as referral for a “mid 40’s professional involved in a high conflict divorce.” Interested parties should be asked to contact the requestor for more details.

48 ☐ The Ethical Use of the Internet

Adapted from Donner, M.(2007) The Ethical Use of the Listserv: Privacy and Professional Conduct. The California Psychologist., November/December, 2..

- listservs
 - Ensure that any comments posted do not misrepresent the facts, relevant research or the basis for conclusions. An Internet list can be a place for heated discussions on complex topics, however any statements made must be based on professional knowledge unless clearly stated as a personal opinion.

49 ☐ The Ethical Use of the Internet

Adapted from Donner, M.(2007) The Ethical Use of the Listserv: Privacy and Professional Conduct. The California Psychologist., November/December, 2..

- listservs & email
 - Even when expressing a personal opinion, remember that Ethics Code still applies to the posting. Comments must be consistent with all of it’s principals and standards.
 - Do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.”

50 ☐ The Ethical Use of the Internet

Adapted from Sullaway, M. “You’ve Got Email.” The California Psychologist, October/November 2006.

- Email - Privacy and Confidentiality
 - Avoid confidential information in email/IM communications.
 - Be discreet in subject lines
 - Establish security measures.
 - Update firewalls & virus protection
 - Wireless devices must be secured
 - Encrypt data transmission
 - Password protect data storage
 - Remove all data when disposing/recycling computers

51 ☐ The Ethical Use of the Internet

Adapted from Sullaway, M. “You’ve Got Email.” The California Psychologist, October/November 2006.

- Email - Discuss the risks with those patients who wish to email you, remaining sensitive to patients’ technological sophistication. Do they

- Have the technical skills to secure the computer?
- Have a private area for using email?
- Have shared email accounts with other family members?
- Know how to delete and recover email

52 ☐ The Ethical Use of the Internet

Adapted from Sullaway, M. "You've Got Email." The California Psychologist, October/November 2006.

- Telemedicine
 - Prior to the delivery of health care via telemedicine:
 - Obtain verbal and written informed consent from the patient or the patient's legal guardian.
 - Include a description of the potential risks, consequences, and benefits
 - All existing confidentiality protections apply.
 - All existing laws regarding patient access to medical information and copies of medical records apply.

53 ☐ The Ethical Use of the Internet

Adapted from Sullaway, M. "You've Got Email." The California Psychologist, October/November 2006.

- Telemedicine potential ethical and legal pitfalls.
 - Informed consent. How do you confirm age and legal status?
 - Confidentiality & privacy concerns
 - Reporting requirements in the case of threats of suicide or homicide
 - Practicing "within a state" or "entering" a state via email? Identify licensure issues?
 - What is your legal exposure and malpractice coverage?
 - Professional emergencies?

54 ☐ The Ethical Use of the Internet

Adapted from Sullaway, M. "You've Got Email." The California Psychologist, October/November 2006.

- The guidelines for internet communicate with patients.
 - Triage: Who will handle emails?
 - Error Avoidance: Avoid forwarding and/or replying
 - Response time: Discuss with clients what turn-around time should be expected. What to do if a response is not received.
 - Informed consent. Consider adding a statement to the usual informed consent, to be signed by the client, including mention of limitations, risks, benefits of email, etc.
 - Fees. Consider if clients will be charged for time reading and responding to messages?

55 ☐ The Ethical Use of the Internet

Adapted from Sullaway, M. "You've Got Email." The California Psychologist, October/November 2006.

- Appropriate topics for email
 - Scheduling and confirming appointments.
 - Requests for information.
 - Clarification of homework.
- Inappropriate topics
 - Emergencies requiring an urgent response.
 - HIV status or other highly sensitive personal information.