Ethics for Addiction Professionals

by
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Ethics Defined
- The word “ethics” is derived from the Greek word “ethos” (character) and the Latin word “mores” (customs) (Brohl & Ledford, 2008)
- Best understood as a philosophical discipline that deals with right and wrong in human conduct and decision making. (Washington & Demask, 2008)
- Normative interactions between counselors and clients are based on accepted standards and conventions within the field
- Professional codes of ethics pertain to the standards that govern the conduct of its professional members (Corey, Corey & Callanan, 2007).

Codes of Ethics (Washington & Demask, 2008)
- Specifics provided by organizations such as the American Counseling Association (ACA), the Association for Addiction Professionals (NAADAC).
- Associations offer codes of ethics to guide counselors in their understanding the accepted standard of behavior in any situation with a client
- Provide a general view of what constitutes appropriate ethics in our profession

Key Terms (Corey, Corey & Callanan, 2007)
- Values – beliefs and attitudes that provide direction to everyday living
- Morality – concerned with perspectives of right and proper conduct
- Community Standards (mores) standard for counselor’s social contact within the culture
- Reasonableness – usually defined as the care that is ordinarily exercised by others practicing within that specialty
- Professionalism – has relationship to ethical behavior, can act unprofessionally and still not act unethically.

Levels of Ethical Practice (Corey, Corey & Callanan, 2007)
- Mandatory Ethics – level of ethical functioning wherein counselors act in compliance with minimal standards acknowledging the “musts” and “must nots”, focus on behavioral rules.
- Aspirational Ethics – highest standards of thinking and conduct professionals seek, counselors do more than simply meet the letter of the ethics code.

Principle Ethics and Virtue Ethics (Corey, Corey & Callanan, 2007)
- Principle Ethics – set of obligations and a method that focuses on moral issues.
  - Principle Ethic Goals:
    a) Solve a specific dilemma or set of dilemmas
    b) Establish a framework to guide future ethical thinking and behavior.
  Usual focus on acts and choices asking: “what shall I do?” and “is this situation ethical?”
Principle Ethics and Virtue Ethics (con’t)

Virtue Ethics – focuses on the character traits of the counselor and nonobligatory ideals to which professionals aspire rather than on solving specific ethical dilemmas.

“Am I doing what is best for my client?”

Best to integrate principle & virtue ethics

Virtuous Ethics

- Motivated to do what is right because counselor judges it to be right (not obligation)
- Rely on vision and discernment (sensitivity, judgment and understanding)
- Compassion and sensitive to suffering of others (able to act to reduce clients’ pain)
- Self-aware (know how assumptions, convictions and biases affect interactions)
- Understand the mores of their community (understand ideals and expectations of the community).

Case Example
(Corey, Corey & Callanan, 2007)

Your client is doing well in counseling with you. One day he informs you that he was laid off his job and cannot continue therapy because he cannot pay your fee.

Discussion: What would you do?

Possible Responses

- Refer to a local community clinic that provides low-cost treatment
- Continue to see and request that the client pay whatever he can
- Put therapy on hold until he can afford it
- Can’t afford to see him without payment, but suggest that he continue to write in journal and see client once a month for half an hour to discuss journal and he can pay what he can afford until his financial status changes

EXERCISE: Inventory of Your Attitudes and Beliefs about Ethical and Professional Issues

Moral Principles to Guide Decision Making
(Corey, Corey & Callanan, 2007)

Autonomy – promotion of self-determination or freedom of clients to choose their own direction.

Nonmaleficence – avoiding doing harm which includes refraining from actions that risk hurting clients

Beneficence – promoting good for others

Justice – be fair by giving equally to other

Fidelity – fulfilling responsibilities of trust in a relationship including keeping promises

Veracity – truthfulness

Limitations of Ethical Codes
(GLadding, 2007)

- Some issues cannot be resolved by a code of ethics
- There are difficulties in enforcing ethical codes
- There are sometimes conflicts within the standards delineated by the code
- There are legal and ethical issues that codes do not cover.
- Ethical codes are historical documents, and what may be acceptable practice at one time may be considered unethical at a later time.
Limitations of Ethical Codes (con't)

- There are sometimes conflicts between ethical and legal codes
- Ethical codes do not address cross-cultural issues
- Ethical codes do not address every possible situation
- There is often difficulty in bringing the interest of all parties involved in an ethical dispute systematically
- Ethical codes are not proactive documents in helping counselors what to do in new situations.

Model of Ethical Decision Making (Corey, Corey & Callanan, 2007)

1. Identify the problem or dilemma
   - Gather all information
   - Clarify whether conflict is ethical, legal, clinical, professional, or moral or a combination

2. Identify the potential issues involved
   - Describe the critical issues, discard the irrelevant ones
   - Evaluate right, responsibilities and welfare of all involved
   - Consider cultural context
   - Consider the six basic moral principles and apply to situation, including those that might be in conflict
   - Involve client if appropriate

3. Review the relevant ethical codes
   - Your professional organization codes may offer a possible solution
   - Consider if your ethics are in line with these
   - If in disagreement, do you have a rationale to support your opinion?

4. Know the applicable laws and regulations
   - Stay up-to-date on relevant state and federal laws
   - Seek guidance from professional organization on any specific concern
   - Understand the current rules and regulations of the organization where you work

5. Obtain consultation
   - Consult with colleagues for different perspectives
   - Don’t limit to persons who share your views
   - If legal issue, seek legal advise
   - If a cultural issue, consult with person who has knowledge of that culture
6. Consider possible and probable courses of action.
- List possible solutions, brainstorm
- Even consider that no action is required
- Discuss with client (if applicable) and other professionals ensure these are documented

7. Enumerate the consequences of various decisions.
- Think of the implications of each course of action for the client, others related to the client and you.
- Examine probably outcomes considering potential risks and benefits

8. Decide on what appears to be the best course of action.
- Try not to second guess yourself
- The more obvious the dilemma the clearer course, the more subtle, the more difficult the decision.
- Review notes, determine whether further action is needed
- Reflect on what you learned from the experience

Counselor as a Person
- Counselors are asking clients to look honestly at themselves, counselors must be open to the same scrutiny.
- If counselors are to promote growth and change in clients, they must be willing to promote growth in their own lives.
- Must be able to model and live in accordance with what they teach
- Must be aware of their own biases, areas of denial and unresolved conflicts and problems

Case Example (adapted by Corey, Corey & Callanan, 2007)
An intern is specializing in the treatment of children from abusive homes. He came from a family where both parents were alcoholics and abused drugs. He becomes easily tearful when working with the children and at times becomes very angry with the parents. He devotes extra time beyond his scheduled hours and has difficulty saying “no” to his clients and his personal life suffers. He is often short-tempered with his co-workers. He tells his supervisor that the agency is not doing enough for the children and how much he is affected by their plight. His supervisor refers him to therapy.

Personal Therapy for Counselors (Corey, Corey & Callanan, 2007)
Benefits include:
- Increasing availability and effectiveness with clients
- Provides a framework for understanding how you relate to others
- Helps you to know what the experience of being a client is really like
- Can help you take an honest look at motivations for being a counselor
Maintaining Wellness
(Corey, Corey & Callanan, 2007)

Counselor Impairment
- Presence of illness or psychological depletion likely to prevent counselor from being effective with clients
- Burnout (physical, emotional, intellectual and spiritual exhaustion characterized by feelings of helplessness and hopelessness)
  Preventing Impairment and Burnout:
  - Sustaining personal self – serious ethical obligation
  - Appropriate self-care (diet, exercise, rest etc.)

Transference and Countertransference
(Corey, Corey & Callanan, 2007)

Transference – process whereby clients project onto their therapist past feelings or attitudes they had toward significant people in their lives.
Countertransference - any projections by therapists that distort the way they perceive and react to a client (therapist’s reaction to the client is intensified by the therapist’s own experience)

Transference
- Origins usually in early childhood
- Repetition of past material, feelings rooted in past relationships
- Causes a distortion in the way clients perceive and react to you
- How you handle this is crucial
- Must be aware of own dynamics or you may miss important therapeutic issues when you should be challenging clients to understand and resolve feelings they are bringing in the present

Transference (con’t)
- Example: Client tells you that she is disappointed in her counseling. She doesn’t know if you care about her and that she would like to be more special to you, not just another client.
  - How would you deal with client’s expectations?
  - Can you see a potential ethical issue in how you respond to the client?
  - Would you tell her how she affected you? Why or why not?

Countertransference
- Counselor’s reaction to the client is intensified by own experience
- Ethically, counselors are expected to identify and deal with their reactions in supervision or consultation so it does not affect the client
- Can be constructive or destructive
- Can illuminate some significant dynamics of a client
- Client may be stimulating reactions by making the counselor into a key figure from the past
- When counselor recognizes these patterns, can help client change them
- Key is how the therapist responds to the countertransference

Countertransference: Example
(adapted from Corey, Corey & Callanan, 2007)

A counselor is working with a client John who was court-ordered into treatment because he was arrested for dealing drugs and is on your caseload. Although he states he is coming to you to process his feelings about his family abandoning him as a result of his addiction, he often expresses hostile feelings toward persons who are gay and toward persons who have contracted AIDS, blaming them for having the disease. The counselor’s daughter is gay and his prejudice affects her emotionally and they are getting in the way of her ability to counsel him.
**Example of Responses**

Counselor should:
- disclose how he/she is affected by the client and disclose about having a gay son
- Express hurt and anger to colleague but not the client nor disclose the hard time he/she is having working with the client
- Disclose how deeply he/she is bothered by the client’s prejudice but not disclose about the gay son
- Because of transference, refer the client to another counselor with no disclosure about why he/she is having trouble with him
- Put own feelings aside and try to work with him to reduce his prejudice

Which approach do you find yourself in most agreement with?

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**Countertransference: Ethical Implications**
(Corey, Corey & Callanan, 2007)

Ethical issues related to:
1. Being overprotective of a client (may lead client to steer away from area sensitive to counselor)
2. Treating clients in benign ways (avoid client’s anger)
3. Rejecting a client (see client as needy)
4. Needing constant reinforcement and approval (therapeutic techniques good)

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**Countertransference: Ethical Implications**
(Corey, Corey & Callanan, 2007)

5. Seeing yourself in your clients (may lose objectivity, unable to distinguish own feelings)
6. Developing sexual or romantic feelings (can exploit the vulnerable position of the client)
7. Giving advice (may be tempted if client seeks immediate answers)
8. Developing a social relationship with clients (often destroys the relationship, may lead to lawsuit)

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**Dual Relationships**

Addiction Counselors must avoid dual relationships.
- Imbalance in the relationship
- Client is more vulnerable than the counselor
- Counselor is viewed as more knowledgeable and therefore more powerful
- Most professionals agree that this difference lasts a lifetime
- Common expression “once a client, always a client”
- Conflict of interest always affects a counselor’s judgment.
- What follows is often harmful as counselors may lose objectivity and clients may lose their power to be assertive and take care of themselves.

**EXERCISE**: Professional Boundaries Self-Assessment

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**Dual Relationships**

- Becoming friends and socializing with a client
- Doing business with a client
- Accepting gifts from a client
- Having a sexual relationship with a client
- Bartering for goods
- Entering into a professional or close relationship with a client’s friend or family member

**EXERCISE**: Professional Boundaries Self-Assessment

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**Dual Relationships**

While most professional codes of ethics mention both sexual and non-sexual dual relationships, the law does not specifically address dual relationships, except for sex with clients.

**Legal Sanctions Against Sexual Violators**
- Target of a lawsuit
- Conviction of a felony
- License revoked or suspended by the state
- Being expelled from professional organizations
- Losing insurance coverage
- Losing job
- May be placed on probation, be required to undergo therapy and close monitoring if allowed to resume practice.
Role Blending

- Combining roles and responsibilities
- Some have inherent duality
- E.g. some counselor educators serve as instructors but can serve as therapeutic agents for students’ personal development
- Teacher and supervisor
- Supervisor may assist supervisee in identifying ways their issues are blocking ability to work with clients

Boundary Issues
(Corey, Corey & Callanan, 2007)

- Boundary Crossing – a departure from commonly accepted practices that could potentially benefit clients.
- Boundary Violation – a serious breach that results in harm to clients.

Boundary Issues (con’t)

- Maintain healthy boundaries from the outset
- Secure informed consent and discuss potential risks and benefits of dual relationships or blending of roles
- Be willing to discuss any potential problems and conflicts that may arise
- Seek supervision or consult with other professionals
- Document dual relationships in clinician notes
- When necessary, refer clients to another professional

Addiction Counselors in Recovery
(Washington & Demask, 2008)

“Two-hatters” – common term, wear one hat as a person in recovery and another as addiction professional especially vulnerable.
Addiction counselors may have to abstain from personal sharing when a client is present at a Twelve Step meeting
This sacrifice to professional standards can be difficult especially in more rural areas as fewer options for meetings.
Attendance at same meeting, client’s right to confidentiality & counselor’s anonymity at risk (Doyle, 1997)
What about open meetings?

Addiction Counselors in Recovery (con’t) (Doyle, 1997)

Self-disclosure in counseling raises dual issues
- If counselor discloses in recovery new element to counseling relationship introduced
- Now co-members
- Risk of not having an exclusively professional relationship
- Sharing details leads to more personal than professional relationship

Sponsorship
(Washington & Demask, 2008)

- Counselors in recovery need to be aware of their responsibility not to act as a professional and “counsel” their sponsees.
- In this role, counselor acts as recovery member sharing his or her own experience, strength, and hope while off duty.
Addiction Counselors in Relapse (Bissell & Royce, 1994)

- Credential of successful role model lost
- Referral to employee assistance program
- If agency is large enough, possible transfer
- Agency should have set rules in place before this occurs

Considerations:
- Who will take over caseload?
- What if the program has a two year clean time requirement?
- What will the patients be told?

Imposing Values on a Client (American Counseling Association, 2005)

A.4.b. Personal Values
Counselors are aware of their own values, attitudes, beliefs, and behaviors and avoid imposing values that are inconsistent with counseling goals. Counselors respect the diversity of clients, trainees, and research participants

Value Conflicts

- Conflicts between clients and therapists values are inevitable.
- Challenge for therapists is to recognize when their values clash with a client’s and the extent they are not able to work with them.
- Possible to work through such conflicts successfully.
- Referral is last resort.
  - Before making a referral, explore your part of the difficulty through consultation.
  - When you decide to make a referral, make it clear to the client that it is your problem, not the client’s.
  - Clients may feel this is a personal rejection and suffer harm if counselor does not complete previous step.

Therapeutic Neutrality (Corey, Corey & Callanan, 2007)

- If you cannot accomplish this neutrality (objectivity) you must own this as your issue.
- Inform your client of the areas in which you think you cannot be neutral.
- Your task is not to approve or disapprove of your clients’ values.
- It is ethical to help clients explore their beliefs and apply their values to solving their own problems.

Law vs. Ethics (Washington & Demask, 2008)

- Legal structure is created at the state or federal level by elected or appointed officials.
- Law does not dictate what is ethical or “right” in a particular situation.
- Law dictates what is legal or illegal.
- Counselor must be aware that while some actions may not be illegal, they may be unethical.

For example:
- Some say that laws governing possession of illegal substances are unethical and argue that laws governing possession are unethical as consequences for possession are disproportionately severe compared to other crimes.
- People who see addiction as a disease may argue that it is immoral or unethical to imprison those who need treatment.
Law vs. Ethics

Ethics in the counseling professions are regulated both by legislation and by professional codes.

- **Laws & Codes** – tend to be reactive, emerge from what has occurred
- **Codes of Ethics** – designed to guide counselors, protect clients, safeguard the autonomy of professional workers, enhance the status of the profession

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Ethics vs. Legality

(Washington & Demask, 2008)

Counselors may have to choose between the ethics and legality of a situation

**Example**: A counselor may have to decide whether to reveal certain information that is confidential e.g. disclose a client’s positive HIV status to an unknowing sexual partner.

What would you do if faced with this situation?

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Ethics vs. Legality (con’t)

(Dickson, 1998)

While counselors have a duty to warn there are also laws which prohibit disclosure of HIV status including:

- Invasion of privacy under federal or state constitutions
- Violation of civil rights Sec. 1983 of Title 42 of the U.S. Code
- Malpractice actions for breach of fiduciary duty
- Violation of one’s professional code of ethics
- Violation of confidentiality protections surrounding federally funded drug and alcohol programs

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Ethics vs. Legality

(Washington & Demask, 2008)

**Example**: Court might order the release of addiction treatment records

Counselor might be unwilling to breach this trust with the client

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Client Rights

- Part of ethical practice is educating clients about their rights
- Educate clients in advance about the limits of confidentiality
- Must obtain client’s informed consent
- Landmark case Wyatt v. Stickney in 1972 set minimum standards for institutions called “least restrictive alternative”
- Right to treatment
- Right to refuse treatment
- One of more fundamental rights, legal right to strive toward treatment goals
- Evidence-Based Practice & Clinical Practice Guidelines (Durand & Barlow)

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Confidentiality

(Corey, Corey & Callanan, 2007)

- **Confidentiality** – rooted in a client’s right to privacy, and in most states counselors have a legal duty not to disclose information about a client
- **Privileged Communication** – legal concept that bars the disclosure of confidential communications in a legal proceeding
- **Privacy** – constitutional right of an individual to decide the time, place, manner, and extent of sharing oneself with others
Client Confidentiality
(Washington & Demask, 2008)

- Applies to all patients and all forms of disclosure
- Applies even if the person seeking information already has the information, can obtain it by other means
- Has official or special status
- Has obtained a subpoena or warrant
- Is authorized by state law to collect information
- Federal laws and regulations trump any state law
- The principle of transparency should, in general, govern the approach taken by counselors all areas of treatment BUT patient information

“Superconfidential” Information

- HIV/AIDS
- Psychiatric History
- History of treatment for drug/alcohol abuse

(Any addiction information disclosed to you is protected by federal confidentiality rules (42 CFR Part 2).

Practices to Protect Verbal Information
(Essential Learning, 2005)

Do not:
- Discuss client information in public areas
- Discuss client information that can be overheard by someone on the other end of a telephone line
- Discuss one client in front of another client or another client’s family
- Speak too loudly where you may be overheard
- Discuss anything about a client with someone who is not directly caring for that client (e.g. with a co-worker or friend).

Practices to Protect Verbal Information
(con’t)

Do not:
- Discuss client information at home, or in the community
- Discuss sensitive client information on cellular phones or walkie-talkie
- Leave sensitive client information on an answering machine or voice mail (instead, ask for your call to be returned).
- If you accidentally overhear information that you know is confidential KEEP IT TO YOURSELF!

Telecommunication Devises
(Corey, Corey & Callanan, 2007)

- Do not acknowledge clients are receiving services or give out information regarding clients to unknown callers
- Verify that you are actually talking to the intended person when you make or receive calls
- Be aware that there is no way to prevent your conversation from being recorded or monitored by an unintended person
- Be professional, brief, and very careful in talking about confidential information over the phone
- Avoid making any comments that you would not want your client to hear or that you would not want to repeat in a legal proceeding.

Telecommunication Devises
(con’t)

- Do not allow unauthorized persons to hear answering machine messages
- Ensure your access codes are not disclosed
- When leaving a message on an answering machine, be aware that the intended person may not be the one who hears the message
- If you are talking to a client by cellular phone, assume he or she is not in a private place and the conversation may be intercepted by an unauthorized person
- If you send a text message, be as cautious as if you were leaving a voice mail message
Client’s Right to Privacy (Washington & Demask, 2008)

- In addiction counseling, it is common for interested stakeholders to ask a counselor to share information about a client.
- Stakeholders might include family members, medical doctors, probation officers, psychologists, or counselors from other treatment centers, judicial system or ancillary helping professional etc.
- Ensure that you do not disclose any information, even if the other person already has knowledge of this information.

Privacy (Washington & Demask, 2008)

- Recognizes the individual’s right to choose to whom, when and under what circumstances his or her personal information may be revealed.
- When a client feels pressured by a counselor to divulge information, he or she may take action against the counselor which may end up in court.
- Before releasing any information to a third party, a counselor must understand and weigh the patient’s rights in light of these three concepts.

Privileged Communication

- Legal principle that restricts knowledge or information to certain people.
- For communication to be privileged, an existing statute must dictate that certain professionals are afforded this privilege.
- Usually laws cover physicians and attorneys, but sometimes not addiction counselors (varies state to state).

Legal Ramifications of Breaching Confidentiality

- Expulsion from a professional association.
- Loss of certification.
- License revocation.
- Malpractice suit.

Case Law

The Supreme Court ruling that established that communication between a patient and his or her counselor is privileged was:
- Jaffee v. Redmond, 518 U.S. 1 (1996), the Supreme Court created a psychotherapist-patient privilege in the Federal Rules of

Jaffee v. Redmond (1996)

- Police officer (Redmond) came upon a scene, one man (Allen) chasing another with a knife, she told him repeatedly to drop the knife and stated Allen looked as if he was going to stab the other man, she shot and killed him.
- Allan’s representative Jaffee filed suit under Civil Rights act claiming Redmond used undue force.
- Witnesses said that Allan was not armed.
- Jaffee learned that Redmond had seen an LCSW for counseling and requested the records.
Jaffee v. Redmond
518 U.S. 1 (1996)

- Redmond appealed, however, judge rejected argument records were released
- Jury later awarded Allen’s estate $545,000 in damages
- Redmond appealed to the Seventh Circuit and it was ruled that the privilege of which Redmond sought did exist in federal law, and the trial court should have applied it.

Informed Consent
(Corey, Corey & Callanan, 2007)

- One of best ways to protect the rights of clients is to develop procedures to help them make informed choices
- Main purpose is to increase the chances that the client will become involved, educated, and willing to participate
- Codes of ethics require counselors to disclose risks, benefits, and alternatives to proposed treatment.
- Intent of an informed consent document is to define boundaries and clarify nature of relationship

Informed Consent
(Washington & Demask, 2008)

- Clients have the right to understand in advance all the circumstances that would require disclosure of personal information
- Not enough to simply tell the clients, they must fully understand them
- Unless they clearly grasp these possibilities, consent to treatment is not genuinely informed
- Example – a person with severe withdrawal symptoms may not clearly understand and offer informed consent at the time

Legal Aspects of Informed Consent
(Corey, Corey & Callanan, 2007)

- Capacity – means that the client has the ability to make rational decisions. When absent, a parent or guardian is typically responsible for giving informed consent
- Comprehension of information – means that counselors must give clients information in a clear way and check to see if they understand it
- Voluntariness – means that the person giving consent is acting freely in the decision-making process

Laws that Govern Informed Consent

Key federal regulations:
- Drug Abuse Prevention, Treatment, and Rehabilitation Act (42 U.S.C. 290ee-3; 42 C.F.R., Part 2); often referred to as “Part 2”.
- Health Insurance Portability and Accountability Act of 1996 (HIPAA); 45 C.F.R. Part 160, and Subparts A & E of Part 164 referred to as the “Privacy Rule”.

What do these Regulations Govern?

Part 2 – governs the disclosure of any information that could be reasonably used to identify a patient who has applied for or received services
Privacy Rule – applies to the use and disclosure of “protected healthcare information” (PHI)
- Any federally assisted programs, including nonprofits, must comply with both rules
- Privacy Rule additionally applies to people and entities that transmit health information in electronic form
How Does the Privacy Rule Work?

- Establishes certain standards for electronic transmission of health information
- One standard states that programs must maintain reasonable administrative, technical, and physical safeguards to protect the privacy of PHI.
- Each transmission must be limited to the minimum disclosure necessary to accomplish the intended purpose
- Privacy Rule requires verification of the person receiving the disclosure for all transmissions.

Limits of Confidentiality (Washington & Demask, 2008)

- Written consent
- Internal communication within the professional team
- Absence of client identifying information
- Medical emergency
- Court order
- Criminal attack on personnel in a treatment facility
- Research, audit, or evaluation
- Qualified services organization
- Child abuse
- Abuse of disabled adults and the elderly (Corey, Corey & Callanan, 2007)

Written Informed Consent (Washington & Demask, 2008)

- Most disclosures are allowed if a client has signed a valid consent form
- Must ensure that the form has not subsequently been revoked by the client
- Must ensure that the form has not expired
- Must ensure that its scope allows this particular disclosure

Written Informed Consent (con't)

- All consents are revocable except for certain criminal justice consents that may be legally irrevocable
- Under normal circumstances, the client may revoke consent in written, verbal, or electronic form - consent is revoked when the client says it is.
- Must know their own states' parameters as states may not have same time frame.
- Consent forms may limit the form, content, and method of disclosure (e.g. fax) as well as the expiration date.

Re-disclosure (Washington & Demask, 2008)

- Written disclosure are prohibited against re-disclosure or use in criminal proceedings (e.g. cannot re-release client information that you received from another source)
- This requirement reinforces the concept of client confidentiality
- Clients have a right to an accounting of any non-consensual disclosures, including those made in violation of the regulations

Communication within the Treatment Team (Washington & Demask, 2008)

- Program staff may disclose information to one another in connection with their role in treatment service delivery
- Enables the counselor to provide professional expertise to the client
- Includes communication between supervisors and supervisees
- Privacy Rule requires that staff make a reasonable effort to limit information access to what is reasonable necessary for appropriate service delivery
Medical Emergencies

Counselor may disclose to public or private medical personnel any information necessary to meet a medical emergency.

- Know in advance what potential information you may need to release and review the law surrounding the information to advance (e.g. information such as medications, illnesses etc).

Court Order

(Washington & Demask, 2008)

- State or federal court may issue a court order that requires the treatment facility to make a disclosure that would otherwise be prohibited.
- Only allowed after the court follows the specific procedure and guidelines outlined in the regulations.
- Subpoena is required in addition to the court order (search and arrest warrants do not qualify as orders under these regulations).

Court Order (con’t)

Before issuing an order, the court considers three questions:
1. Is this court order necessary to prevent a threat to life or serious injury?
2. Is this order necessary to investigate or prosecute an extremely serious crime?
3. Is this order related to ongoing proceedings in which a person has already presented evidence concerning protected communication?

Any one of these reasons may be enough to justify a court order.

Client Crimes

(Washington & Demask, 2008)

- When a client has committed or threatened to commit a crime on program premises the counselor can report the crime or intended crime to law enforcement.
- Allows the program to seek the aid and protection of law enforcement.
- Privacy Rule allows in these situations for limited disclosure of information such as client name, status, address, incident and last known whereabouts.

Research, Audit or Program Evaluation

(Washington & Demask, 2008)

- Program may disclose patient identification information to research professionals without patient consent.
- Though the Privacy Rule requires contract with accreditation and audit organizations, it has different guidelines for research disclosures.

Confidentiality and Group Counseling

(Washington & Demask, 2008)

Legal Issues:
- When there are multiple clients e.g. group and family therapy, there are problems with confidentiality.
- Counselor can impress upon group members the importance of confidentiality.
- Can ask members to sign an agreement form stating they will keep confidential what is discussed.
- Almost no jurisdiction in the U.S. will privileged communication be assured for group therapy clients.
- Counselors should inform clients of the absence of confidentiality under these circumstances.
Child Abuse or Neglect
(Washington & Demask, 2008)

- Counselors are required to report child abuse or neglect
- All programs are required to follow state law
- Applies when there is danger of harm to a child

Abuse Reporting

1-800-96Abuse

Mandatory Reporters
- Social workers
- Teachers and other school personnel
- Physicians and other health-care workers
- Mental health professionals
- Childcare providers
- Medical examiners or coroners
- Law enforcement officers

Children’s Witness of Domestic Violence

- Circumstances That Constitute Witnessing
  Citation: Ann. Stat. § 921.0014
  In criminal law, it is considered domestic violence in the presence of a child if an offender is convicted of a primary offense of domestic violence, and that offense is determined to have been committed in the presence of a child under age 16 who is related by blood or marriage to the victim or perpetrator or who is a family or household member with the victim or perpetrator.

- Consequences
  Citation: Ann. Stat. § 921.0014
  When domestic violence is committed in the presence of a child, the subtotal sentience points are multiplied, at the discretion of the court, by 1.5.

  http://www.childwelfare.gov/systemwide/laws_policies/state

Standards for Making a Report Confidentiality

- Typically, a report must be made when the reporter, in his or her official capacity, suspects or has reasons to believe that abuse has taken place.

  Disclosure of the Reporter’s Identity
  All jurisdictions have provisions in statute to maintain the confidentiality of abuse and neglect records.

  Confidentiality of Records Citation: § 39.202
  All records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of § 119.07(1) (allowing public records to be inspected and copied), and shall not be disclosed except as specifically authorized.

Duty to Warn
(Washington & Demask, 2008)

- Arises when a reasonable prediction of harmful behavior is made and a potential victim is identified.
- Counselor identifies a client who is likely to harm another and acts to protect the potential victim from that harm.
- Counselor still continues to treat the client who threatens another person.
- Counselor may be liable if he or she fails to diagnose or predict the potential for dangerous behavior or fails to warn the potential victim.
- Liability may also pertain if the counselor discharges this patient from treatment too early or fails to commit a potentially dangerous client to treatment.

Tarasoff vs. California Board of Regents of the University of California, 1976

On October 27, 1969 Tatiana Tarasoff was killed by a foreign exchange student Prosenjuit Podder who pursued a romantic relationship with her, which she rejected. Podder sought treatment at the school’s health facility and was diagnosed with paranoid schizophrenia. Podder told the Psychologist of his anger and rage and plans to kill Tarasoff. Civil commitment procedures were initiated, however, Podder was released from the hospital. Psychologist reported threat to campus. Police who questioned and released Podder when he agreed to stay away from Tarasoff. Podder discontinued therapy and killed Tarasoff two months later after she rejected him once more. Tarasoff’s parents sued the university, therapist and the police for negligence.

Was the university, therapist and police negligent in this case?
**Tarasoff vs. California Board of Regents, 1976**

Case went to California Supreme Court
- All were found guilty as they did not notify Tarasoff directly (although Podler did not mention her name)

Court Ruled Therapist is Liable if:
- They should have known about the dangerousness based on accepted professional standards
- They failed to exercise reasonable care in warning the potential victim

Results of Decision
- Decision sparked laws in virtually every state
- Debate over confidentiality vs. duty to warn has existed since

**Confidentiality and HIV/AIDS (Washington & Demask, 2008)**

- A demographically diverse group, people with HIV/AIDS figure prominently in the addiction treatment field
- Persons who use intravenous drugs have a high incidence of HIV infection
- Addiction counselors need to be clear about the limits of confidentiality, matters of reporting, and duty to warn.
- There are specific legal prohibitions against disclosure of HIV information
- Courts have not yet applied the “duty to warn” principle to cases involving HIV infection
- Responsibility for protecting sexual partners of people who are HIV positive remains legally unclear

**Duty to Warn Case Law**

- **Bradley Center, Inc. v. Wesner (1982)** underlines the importance of not releasing a dangerous client from treatment.
  
  Wesner sought treatment because he was upset about his wife’s affair. He told hospital staff that he would likely harm his wife if he had the opportunity. He was given a weekend pass, obtained a gun, confronted his wife and her lover, and killed them both. His children then filed a wrongful death suit claiming the psychiatric center failed in its duty to exercise control over Wesner. The Georgia Supreme Court agreed that a physician has a duty to prevent a potentially dangerous patient from inflicting harm.

- **Jablonski v. United States (1983)**, Meghan Jablonski filed for the wrongful death of her mother, Melinda Kimball, who was murdered by the man she was living with, Philip Jablonski. Jablonski had earlier threatened her mother (Isobel Pahls) and, as a result had agreed to a psychiatric examination at the hospital. Medical team recommended that Jablonski voluntarily hospitalize himself, but he refused. Staff concluded that no emergency issues were present and did not hospitalize him. During a private interview, Kimball expressed fears for her own safety, and was told to avoid him. Shortly after, Jablonski killed her. Circuit court found that failure to previous medical records constituted malpractice.
  
  Essence of case is a negligent failure to commit.

- **Hedlund v. Superior Court of Orange County (1983)** extends the duty to warn: in addition to the potential victim, a warning to others close to the victim may be in order.
  
  Lanita and Stephen Wilson were receiving therapy from a psychologist and a psychological assistant, during therapy, Wilson stated that he intended to harm his wife, therapists warned her of the threats. Later, Stephen ran into Lanita and her son off the road and shot her. She sued the therapists claiming that they did not warn her of the danger to herself or her son. The CA Supreme Court held that the therapists were negligent. They had a duty to not only warn the person threatened but also anyone who may be near the intended victim.

**Malpractice**

- **Malpractice**
  - Means “bad practice”
  - Failure to render professional services or to exercise the degree of skill that is ordinarily expected of other professionals in a similar situation.
  - Legal concept involving negligence that results in injury or loss to the client

- **Professional Negligence**
  - Can result from unjustified departure from usual practice or from failing to exercise due care in fulfilling one’s responsibilities.
Malpractice (con't)

Civil Liability:
- An individual can be sued for not doing right or for doing wrong to another

Standards of Care:
- Primary problem in a negligence suit is determining which standard of care to apply to determine whether a breach of duty has occurred.

Burden of Proof:
- Burden of proof is client's
- Plaintiff must prove four elements

Four elements must be present:
1. Duty – existence of a special relationship
2. Breach of Duty – must show duty was breached
3. Injury – Plaintiffs must prove that they were harmed in some way and that actual injuries were sustained e.g. wrongful death (suicide), loss (divorce), and pain and suffering.
4. Causation – must demonstrate that the professional’s breach of duty was the proximate cause of the injury

President Regan’s Shooting

- The psychiatrist who treated John W. Hinckley Jr. before shooting President Reagan was sued by the three men shot in the attack (James S. Brady, the President’s press secretary; Timothy J. McCarthy, a Secret Service agent, and Thomas Delahanty, a police officer in Washington, D.C.)
- The $14 million lawsuit accused the psychiatrist, Dr. John Hopper Jr. of Evergreen, Colo., of negligence and misdiagnosis.
- The suit charges that Dr. Hopper made Mr. Hinckley’s mental condition worse and failed to heed signals by his patient that he might try a political assassination.
- The lawsuit was filed in Federal District Court in Denver by., where the shooting took place on March 30, 1981.
- Lost case, Judge ruled that there was no previous relationship between Dr. Hopper and Brady and had never heard of each other before

Reasons for Malpractice Suits

- Failure to obtain or document informed consent
- Client abandonment
- Marked departures from established therapeutic practices
- Practicing beyond the scope of competency
- Misdiagnosis
- Repressed or false memory (induced memories)
- Unhealthy Transference relationships
- Sexual misconduct with a client
- Failure to control a dangerous client

Most Common Types of Malpractice

- Faulty diagnosis
- Improper certification in a commitment process
- Failure to exercise adequate precautions for a suicidal patient
- Breach of confidentiality
- Faulty application of therapy
- Promise of a cure, may form the basis of a breach of contract

Unethical Behavior of Colleagues

- H.2.b. Informal Resolution
  When counselors have reason to believe that another counselor is violating or has violated an ethical standard, they attempt first to resolve the issue informally with the other counselor if feasible, provided such action does not violate confidentiality rights that may be involved.

- H.2.c. Reporting Ethical Violations
  If an apparently has substantially harmed, or is likely to substantially harm a person or organization and is not appropriate for informal resolution or is not resolved properly, counselors take further action appropriate to the situation.
Grievance Process

- Patients are afforded rights by federal and state law
- When a patient believes that they have been wronged they can file a formal grievance
- It is a written document that a requires complainant to sign and date
- Procedure includes delineation of a step-by-step process with time frames for action
- Patients should be advised of the agency grievance procedure upon admission

Risk Management

- Have you ever been in a counseling session when your client says something to you that makes you wonder whether he or she is at risk for self-harm or harm to others?
- What actions did you take?

NAADAC Code of Ethics

Principle 6: Rights and Duties
I understand that the right of confidentiality cannot always be maintained if it serves to protect abuse, neglect, or exploitation of any person or leaves another at risk of bodily harm.

Risk Factors for Suicide

Biopsychosocial Factors
- Major disorders, particularly mood disorders, schizophrenia, anxiety disorders, and certain personality disorders
- Alcohol and other substance abuse disorders
- Hopelessness
- Impulsive/aggressive tendencies
- History of trauma or abuse
- Some major medical illness
- Previous suicide attempt
- Presence of a plan
- Lethality of plan
- Means to complete Plan
- Family history of suicide
- Cognitive limitations or sense of limited options.

Risk Factors for Suicide (con’t)

Some major medical illness
- Previous suicide attempt
- Presence of a plan
- Lethality of plan
- Means to complete Plan
- Family history of suicide
- Cognitive limitations or sense of limited options.

Environmental Factors
- Job or financial loss
- Loss of social status
- Relational or social loss
- Anniversary of loss or tragic event
- Easy access to lethal means
- Local clusters of suicide that have a contagious influence

Protective Factors
- Hope
- Moral or spiritual belief against harm
- Skills in problem solving and conflict resolution
- Supports and resources
- Sense of purpose
- Sense of connection
- Dependents (even pets)
- Positive therapeutic alliance and active involvement in treatment
- Sense of responsibility toward others
- Restricted access to highly lethal means of suicide

Risk Factors for Suicide (con’t)

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- Mental disorders, particularly mood disorders, schizophrenia, anxiety disorders, and certain personality disorders
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Guidelines for Assessing Suicidal Behavior  
(Corey, Corey & Callanan, 2007)

- Take direct verbal warnings seriously (one of most useful predictors of suicide)
- Document your actions
- Pay attention to previous suicide attempt (best predictor)
- Identify clients suffering from depression, self-discussion (clinical depression 20 times more likely to complete suicide than general population)
- Be alert for feelings of hopelessness & helplessness
- Explore issues of loss and separation
- Monitor severe anxiety and panic attacks
- Determine if individual has a plan
- Identify clients with history of severe alcohol or drug abuse
- Be alert to client behaviors such as giving away prized possessions, writing wills
- History of previous psychiatric treatment
- Assess support system (greater risk with no support system)

Questions to Assess Suicide Risk

- Is there a plan?
- Has the person seriously thought about death?
- Does the person have the means available to kill him or herself?
- Who could stop him or her?
- What kind of emotional support is available in the family, at home, or elsewhere?

Liability Issues for Suicide

Eisel v Board of Education (1991). One of first cases which addressed school counselor liability for student suicide. Thirteen year-old student Nicole was involved in Satanism, made a suicide pact with another student, who shot Nicole then shot herself. Students had told the counselor about her suicidal intentions who spoke to Nicole but she denied them. Court found that reasonable care would have included notifying Nicole’s parents. Although the suicide was off campus, court held that legally the school could be held liable for failure to exercise reasonable care to prevent a foreseeable injury.

Levels of Clinical Risk

Low
- Passive suicidal ideation with no plan or intent
- Multiple protective factors
- No past attempts at self-harm,
- Willingness to develop safety plan and demonstrates ability to carry through

Medium
- Ideation with plan and possibly means but with some protective factors
- May be willing and able to develop a safety plan and agrees to follow through

High
- Ideation with plan and lethal means
- Multiple risk factors
- Either unwilling or unable to follow through on a safety plan
- Danger may be imminent or is highly lethal

Warning Signs of Violence  
http://www.apahelpcenter.org

Immediate Warning Signs:
- announcing threats or plans for hurting others
- detailed plans to commit acts of violence
- loss of temper on a daily basis
- frequent physical fighting
- significant vandalism or property damage
- increase in use of drugs or alcohol
- increase in risk-taking behavior
- enjoying hurting animals
- carrying a weapon

Warning Signs of Violence  
(con’t)

Signs of violence over a period of time:
- a history of violent or aggressive behavior
- serious drug or alcohol use
- gang membership or strong desire to be in a gang
- access to or fascination with weapons, especially guns
- threatening others regularly
- trouble controlling feelings like anger
- withdrawal from friends and usual activities
- feeling rejected or alone
- having been a victim of bullying
- poor school performance
- history of discipline problems or frequent run-ins with authority
- feeling constantly disrespected
- failing to acknowledge the feelings or rights of others
Risk Assessment & Safety Plan

- Reason for assessment
- Description of ideation and/or behavioral concerns as they pertain to client risk
- Means to complete any noted plans of action
- Past risk behaviors
- Current risk factors
- Protective factors
- Does the client’s behaviors place any one else at risk? How?

Safety Plan Should Include:
- Steps the client will take to ensure safety
- Steps the supportive others will take to ensure safety
- Steps the counselor will take
- Follow-up appointments

Ethical Concerns in Multicultural Counseling

- As our society becomes increasingly multicultural, counselors must be able to address multicultural and gender-related issues
- Most professional codes of ethics address cultural competence
- No understanding of ethical issues in counseling complete without awareness of need for cultural competence
- Diverse populations have special needs that require more diversified solutions and interventions.
- Ethical codes require that counselors educators teach multicultural issues to those new in the field.

Five Elements of Cultural Counseling (Ledofrd & Brohl, 2008)

1. Valuing Diversity cross culturally in behaviors, practices, policies and
   attitudes
2. Conducting cultural self assessment to assess for personal and
   professional proficiency
3. Managing the dynamics of difference within helping networks including
   clinical settings, neighborhoods, ethnic-social-religious organizations, and
   spiritual communities
4. Acquiring and integrating cultural knowledge by seeking out information
   and professional development
5. Adapting to diversity and cultural contexts that include policies, values and
   services.

EXERCISE: Self-Assessment

The American Counseling Association
Ethical Standards
(ACA; 1995)

The ACA addresses cultural sensitivity and states that counselors:
- actively understand the diverse cultural backgrounds of the clients they serve
  (Section A)
- explore their own cultural identities and how these affect their values and beliefs
  about counseling process (Section A)
- communicate information in ways that are developmentally and culturally
  appropriate (A.2.c.)
- provide necessary services (e.g. arrange for a qualified interpreter/translator)
  when necessary to ensure comprehension by clients (A.2.c.)
- understand cultural implications of informed consent procedures and where
  possible, adjust their practices accordingly (A.2.c.)
- be aware of their own values, attitudes, beliefs, and behaviors and avoid values
  that are inconsistent with counseling goals (A.4.b.)

Key Terms

Ethnicity – sense of identify that stems from common ancestry, history,
nationality, religion and race

Culture – way of life, customs passed from one generation to another,
guides thoughts, decisions, actions.

Minority – traditionally referred to national, racial, linguistic and religious
groups – now applies to women, elderly, GLBT and people with
disabilities

Race – a group of persons related by common descent or heredity

Multiculturalism – any relationship between and within two or more
diverse groups

Definitions (Essential Learning)

Prejudice
- Premature judgment or attitude about a person or group that is
  not based on facts
- Usually based on stereotypes (e.g. “I don’t want teenagers living
  in my neighborhood”)

Stereotyping
- The over-simplification and over-generalization of views about
  individuals or groups (e.g. “all teenagers these days are drug
  users and not to be trusted”)
Myth of Sameness
(Bernard & Goodyear, 2004)

- Error of most helping professionals who believe that their skills are generic and can be applied to individuals of different backgrounds.
- All persons carry within themselves and individual, group, and universal identity.
- As many counselors are of the dominant culture, may be a tendency to adopt an "us-them" mentality when working with minorities.

Cultural Tunnel Vision
(Corey, Cory & Callanan, 2007)

- Some students come into training with cultural tunnel vision.
- May see it as their mission to teach clients their view of the world.
- May have difficulty in empathizing with others whose experiences vary significantly from their own.
- Counselors from all cultural groups need to honestly examine their own expectations and attitudes as it applies to different cultural and ethnic groups.

Adapting Interventions to Multicultural Perspectives

Such adaptation:
- Respects the special needs and strengths of diverse populations.
- Recognizes the environmental experiences of clients.

One Ethical Response

Mary has a strong belief in her client’s self-determination, the client’s has a belief in her ability to assist, and she is willing to read the literature and consult the Internet on protocol, thus Mary agrees to revise their plan of treatment and proceed.

Cultural Insensitivity: Examples

- Documenting that an Asian woman is being anti-social because she sits in a chair far from yours and does not maintain eye contact.
- Having religious symbols in your office and assuming a client is of the same religion as you.
- Assuming that your client who happens to be a gay man is promiscuous and attractiveness simply because he is gay.
- Insisting on referring to a female-to-male person who is Transgendered in female pronouns and discussing female issues in therapy.

Informed Consent Regarding Supervision (Bernard & Goodyear, 2004)

- Supervisor must ensure that supervisees are aware of supervision that will affect them (audiotapes, confidentiality, etc).
- Supervisees should know the conditions that dictate their success or advancement.
- Responsibilities of supervisor and supervisee should be clear.
Example

An employee who has been working as an addictions counselor in an inpatient program receives a promotion. He is now a supervisor in a prevention program for adolescents at risk. He receives no negative feedback at all during his 90-day probationary period; thus he assumes all is well. He comes to his supervisor’s office for his 90-day review and she tells him that his performance is less than satisfactory and, as a result, he has not passed his probationary period. He learns that he is being demoted to working in the call center answering phones at a salary rate that is lower than he had when working as a clinician in the inpatient unit.

Was this employee's due process rights violated? In what way?

Ethical Concerns within the Supervisory Relationship (Bernard & Goodyear, 2004)

Dual Relationships Issues:
- Impairment of judgment for the supervisor
- Risk of exploitation of the supervisee

Examples of Dual Relationships:
- Sexual relationship
- Financial relationship
- Bartering of goods
- Supervisor is counselor
- Supervisee and supervisee are close friends

Confidentiality within the Supervisory Relationship

Triangulation – e.g. client tells supervisee not to tell the supervisor something he or she says in the session.

Should the counselor tell the client that he will keep the information secret?

What is the appropriate response to this request?

Ethical Dilemmas & Boundary Issues

Case Study #1

Supervisor who draws from counselor role is in a supervisory session with Tina who appears to be struggling during the session. She appears preoccupied and is having difficulty focusing on the case presentation she is attempting to discuss. The supervisor encourages Tina to self-disclose and she tells her supervisor that she has relapsed on cocaine and is having difficulty getting clean. She insists that she will not use anymore starting right now and verbalize her wish to continue to see clients.

- What ethical dilemmas does this present?
- What should the supervisor do?

Case Study #1 (con’t)

Encouraging self-disclosure:
- May lead to the conclusion that the supervisee simply is not suited for this line of work.
- Consequent action the supervisor may take in the role of evaluator can be antithetical to the supervisee’s personal and professional development

Case Study #2

The supervisor calls her supervisee telling him that she will be late to their session as her car has broken down for the tenth time. The supervisor tells her supervisee that she is very upset because the car is unable to be repaired and she must purchase another one. Later that day during the supervision session, her supervisee tells her that he has an extra car that he would sell her for only $500.00.

- What ethical dilemma does this present?
- What should the supervisor do?
Case Study #2 (b)
Same scenario as above, however after the supervisor declines buying the car for $500.00, the supervisee states, "heck, I will give you the car for free! You have helped me so much!"
• What ethical dilemma does this present?
• What should the supervisor do?

Case Study #3
Sarah is the supervisor of a residential treatment center. Her roommate since college is Natalie, who works in the outpatient program in another building. Sarah has an opening for a therapist in her program and Natalie comes to work for her. Natalie’s performance begins to decline, she is late to work, she begins to get behind on completing her documentation and one day Sarah comes into Natalie’s office and finds her surfing the Internet.
• What ethical dilemma does this present?
• What should the Supervisor do?

Case Study #4
Shelly has a new employee to whom she feels very attracted. She finds herself becoming increasingly flirtatious when in his presence. She finds herself taking extra care getting ready for work in the morning. In fact, she has been dressing up more than usual and at times wears clothes that she usually reserves for going out at night. She finds herself watching for him and stopping by his office frequently to find out how his sessions are going. Shelly finds herself seriously considering asking him out to dinner this coming weekend.
• What ethical dilemma does this present?
• What should the Supervisor do?
• What should the Supervisee do in this situation?

Case Study #5
It is Friday afternoon and you have just completed your regularly scheduled supervision with your supervisor. You are now having idle talk with your supervisor about plans for the upcoming holiday weekend. Your supervisor states that it won't be a holiday, because he has to move that weekend. You had just shared that you have no plans for the weekend and your supervisor asks that you come over to his house and help him move.
• What ethical dilemma does this present?
• What should the employee do?

Case Study #6
You come in to your supervisor's office to ask a question and see that she has been crying and is visibly upset. You ask her if she is okay and she begins to tell you details of her relationship with her husband and how he is being verbally abusive to her. She asks you for advice about what she should do. You see her drawer open and there is what appears to be a small bag of marijuana in her drawer.
• What ethical dilemma does this present
• What should the employee do?
• Supervisors must act as leaders in developing cultural competence and act as role models for their supervisees
• Commitment must come from the top; diversity implementation is most effective when strong leadership is exerted on behalf of multiculturalism
References


