Ethical and Risk-management Issues in the Addictions Field

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Evolution of Social Work Ethics

- Morality period (late 19th century to early 20th century)
- Values period (early 20th century to 1970s)
- Ethical dilemmas and decision-making period (late 1970s to present)
- Ethics risk-management period (early 1990s to present)
- Digital period (2010-ish to present)
Core Knowledge

• Ethical dilemmas: http://www.youtube.com/watch?v=WAMBOmNWoVQ&list=TLZp_vbPzyad9ry_25HoVYzPWPlStowpe6
• Ethical decision-making
• Ethics risk management
Potential Ethics Risks

• Ethical mistakes
• Deliberate ethical decisions
• Ethical misconduct
Key Risk Areas

- Client rights
- Confidentiality and privacy
- Informed consent
- Service delivery
- Boundary issues and conflicts of interest
- Digital and social media
- Documentation
- Defamation of character
- Client records

- Supervision
- Staff development and training
- Consultation
- Client referral
- Fraud
- Termination of services and client abandonment
- Practitioner impairment
- Evaluation and research
Standard of Care

“What an ordinary, reasonable, and prudent professional, with the same or similar training, would have done under the same or similar circumstances.”
Standards of Care

• Substantive standard of care
• Procedural standard of care (see Reamer, 2015)
  – Consult colleagues and supervisors
  – Review relevant ethical standards
  – Review relevant laws, policies, and regulations
  – Review relevant literature
  – Obtain legal consultation, when necessary
  – Consult ethics committee, if available
  – Document decision-making steps
Types of Laws

• Regulatory law (executive branch)
• Statutory law (legislative branch)
• Case law (judicial branch)
• Constitutional law
Professional Negligence

• A duty exists
• Dereliction or breach of the duty
• Damage or injury
• Causal connection between the breach of the duty and the damage or injury (proximate cause or “cause in fact.”)
Forms of Negligence

• **Misfeasance**: Commission of a proper act in a wrongful or injurious manner or the improper performance of an act that might have been performed lawfully.

• **Malfeasance**: Commission of a wrongful or unlawful act.

• **Nonfeasance**: The failure to perform an act that is part of one’s responsibility.
Intentional Disclosure

- Duty to protect/warn
- Mandatory reporting
- 42 CFR Part II
- FERPA: Family Education Rights & Privacy Act
- HIPAA: Health Insurance Portability and Accountability Act
- Disclosure: Other agencies
- Disclosure: Within agencies
- Peer Consultation

- Group counseling
- Self-help groups
- Minors
- Bill collection
- Deceased clients
- Sexual misconduct by professionals
- News media
- Law enforcement
- Interns
- Personal notes
Unintentional Disclosure

- Waiting rooms
- Hallways
- Desk
- Office phone
- Office notes
- Elevators
- Restaurants
- Photocopies
- Cellular telephones
- Fax and voicemail
- Internet Communications
- Computer Screen
- Envelope return address
- Bus, Train, Plane
Duty to Protect

• Threat of violence
• Foreseeable threat
• Imminent threat
• Identifiable potential victim
Informed Consent

- Voluntary and informed
- Content of Form
- Process
Content of Form

- Detailed statement of purpose
- Right to refuse and Withdraw
- Reasonable alternatives
- Costs/Benefits
- Jargon
- Blank forms
- Exceptions: Emergency, Therapeutic privilege, client waiver
- Expiration date
- Acknowledgment statement
Process

• Competence
• Verbal explanation
• Opportunity for Q&A
• Language barriers
Defamation of Character

• Libel (written) and slander (verbal)
• Key elements
  – Untrue statements
  – Knowingly untrue or should have known to be untrue
  – Damage or injury
Subpoenas

• Subpoena *duces tecum*; Subpoena *ad testificandum*

• Possible responses:
  – Motion to quash
  – Motion for protective order
  – Request for finding of relevance ("in camera" review)
  – Request to modify subpoena
  – Object to subpoena
Negligent Intervention

- High-risk techniques
- Inadequate training or expertise
Boundary Issues

• Types of dual or multiple relationships
  ◦ Intimate relationships
  ◦ Personal benefit
  ◦ Emotional and dependency needs
  ◦ Altruism
  ◦ Unavoidable and unanticipated circumstances

• “Red Flags”
  ◦ Objectifying client
  ◦ Impulsive actions
  ◦ Self-gratification
Supervision

• Key concepts: *Respondeat Superior* and vicarious liability

• Key elements:
  – Content of supervision
  – Frequency of supervision
  – Duration of supervision
  – Boundaries between supervisor and supervisee

• Documentation
Termination of Services

• The concept of abandonment
• Guidelines to protect clients and minimize risk
Guidelines to Protect Clients and Minimize Risk

- Provide clients with names, addresses, and telephone numbers of at least 3 appropriate referrals when it is necessary to terminate.
- Follow up with a client who has been terminated. If the client does not go to the referral, write a letter to him or her about relevant risks.
- Provide as much advance warning as possible.
- When clients announce their decision to terminate prematurely, explain risks involved and suggestions for alternative care. Include this information in a follow-up letter.
Guidelines to Protect Clients and Minimize Risk (cont’d)

• Carefully document in the case record all decisions and actions related to termination.

• In cases involving discharge from residential facilities, prepare a comprehensive discharge plan and notify significant others (inform clients of this.)

• Provide clients with clear instructions to follow in the event of an emergency. Ask clients to sign a copy acknowledging receipt and that the instructions were explained to them.
Guidelines to Protect Clients and Minimize Risk (cont’d)

• When leaving an employment setting, inform clients of appropriate options for continuation of services (e.g., transfer or continuation) and related benefits and risks.

• Consult with colleagues and supervisors about termination strategy and decisions.

• Consult relevant Code of Ethics standards.
Documentation: Key Issues

• The role of documentation and case recording in professional practice
  – Assessment
  – Planning and delivering services
  – Accountability: Clients, insurers, agencies, other providers, courts, utilization review
  – Continuity and coordination of services
  – Supervision
  – Evaluation of services
Documentation Guidelines

• Content of documentation: Key elements
• Amount: Too little, too much
• Wording: Precision, specificity, and ambiguity
• Defamation of character
• Avoid abbreviations unless approved list
• Print or write legibly
• Do not use dittos, erasures, or “white out”
• Do not document interventions before they occur
• Document in a timely fashion
Documentation Guidelines (cont’d)

- Do not display bias
- Avoid “It seems,” “I believe,” “I suppose,” “It appears,”
- Avoid broad characterizations: “poor outcome,” “good result,” “moderate compliance,” “drunk,” “aggressive,” “combative”
- Document what you know, not what you think
- Do not “over document” in a crisis
- Avoid documenting professional disagreements (jousting)
Documentation Guidelines (cont’d)

• Do not document staffing problems, interdepartmental issues
• Do not tamper with or alter records
• Use correct grammar and spelling (credibility issue)
• Client access to records
• Confidentiality and releases
• Privileged communication
• Personal notes
• Subpoenas
Ethics Committees

• Advisory v. Deliberative

• Functions
  – Case Consultation
    • Retrospective
    • Concurrent
    • Prospective
  – Policy review and formulation
  – Education and training
Ethical Decision-making

• Identify ethical issues: Conflicting values and duties.
• Identify individuals, groups, organizations likely to be affected by decision.
• Tentatively identify all possible courses of action and participants involved in each, along with possible benefits and risks.
**Ethical Decision-making (cont’d)**

- Examine reasons for and against each possible course of action, considering:
  - Ethical theories, principles, guidelines
  - Codes of ethics
  - Legal principles
  - Social work practice theory and principle
  - Personal values (religious, cultural, ethnic, political)
  - Agency policies, regulations
Ethical Decision-making (cont’d)

• Consult with colleagues and appropriate experts (e.g., agency staff, supervisors, administrators, attorneys, ethics experts)
• Make decision and document decision-making process
• Monitor, evaluate and document decisions
Recognizing Ethical Dilemmas: The Nature of “Inattentional Blindness”

http://www.npr.org/2011/06/20/137086464/why-seeing-the-unexpected-is-often-not-believing
Metaethics

• Exploration of:
  – The meaning of ethical terms (e.g., What do we mean by terms such as “right,” “wrong,” “good,” “bad”)
  – Criteria to determine what is ethically right and wrong
  – Ethical theories and principles
Normative Ethics

• **Deontological Theory**: (from the Greek deontos, “of the obligatory.”) Certain actions are inherently right or wrong, good or bad, without regard for their consequences.

• **Teleological Theory**: (from the Greek teleios, “brought to its end or purpose”) The rightness of an action is determined by the goodness of its consequences (also known as “Consequentialism.”)
Utilitarianism

- **Act Utilitarianism**: The rightness of an act is determined by the goodness of the consequences in this individual set of circumstances.

- **Rule Utilitarianism**: The rightness of an act is determined by the goodness of the consequences that would occur if this one action is generalized to all similar circumstances (e.g., this case sets a precedent.)
This presentation draws on: