A Problem Based Learning (PBL) Approach to

Applied Ethics and Law for Texas Psychologists

Prepared for and donated to Texas Psychological Association
By Emily Sutter, Brian Stagner, and J. Ray Hays, copyright © 2005

Directions: To receive 3 hours continuing education credit for psychologists, licensed psychological associates, licensed professional counselors and licensed social workers, for this TPA sponsored home study assignment, you must:

1) Read the article in its entirety;
2) Take the test at the end of the article;

Mail or fax the test answers along with $90 (TPA Members) or $150 (Non-TPA Members) to the Texas Psychological Association, PO Box 1930 Cedar Park, TX 78630 or fax to (512) 255-1642. Examinations will not be scored without appropriate fee. You must answer correctly 70% or better to pass the examination. If you do not pass, you may retake the test, with payment again of the test fee.
A Problem Based Learning (PBL) Approach to

Applied Ethics and Law for Texas Psychologists

3 hour CE ON-LINE

Featuring the Trouble family as the clients

And introducing, as the psychologists:

Mini Esquella, Psychologist and LSSP
Francis (Frank) Familia, Psychologist and LMFT
Paul Pureheart, Psychologist, ABPP-Forensics

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Directions:

In the following vignette please assume that you have the role of the psychologist. Each dilemma contains questions designed to stimulate ethical reasoning. Following each dilemma is a multiple choice exam question. Circle the one best answer to each exam question, then send the answer sheet (along with the fee) for scoring to TPA, PO Box 1930 Cedar Park, TX 78630 or fax (512) 255-1642.

If your score is at least 70% you will receive a certificate for 3 hours continuing education. If you do not score at least 70% you may again pay the fee and re-take the test. Resources provided with the vignette are meant to be suggestive, not exhaustive. Resource citations are only guaranteed for the above date. Primary resources include:

* American Psychological Association Code of Ethics (www.apa.org/ethics)
* National Association of School Psychologists Professional Ethics (www.naspweb.org)
* Texas laws (www.capitol.state.tx.us) then click on Texas statutes in the left column under Research.
* TSBEP rules (www.tsbep.state.tx.us)

The following vignette is a work of fiction designed to promote knowledge acquisition and knowledge application, develop problem solving/critical thinking skills, promote life long self-directed learning and professional behavior, illuminate the ethical role issues of the mental health professional, and illustrate the legal issues of professional practice. The characters and events in this vignette are fictional and any resemblance between real persons and events is coincidental.
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Austin, TX 78701 or you can fax back to (512) 476-7297.
Chapter 1 The Perils of Practice

After many years, three graduates of a well-known Texas institution of higher education find themselves reunited at a continuing education session on ethics. Following graduation, each obtained licensure in psychology and employment by different agencies. Each harbors a wish to branch into the private practice arena. Dr. Mini Esquella, a licensed psychologist, works for the local school district as a licensed specialist in school psychology. Francis (Frank) Familia is a highly respected counseling psychologist who works at a local family service center. He consults frequently with Dr. Paul Pureheart, a clinician and forensic expert who works at the regional medical center.

Dr. Familia mentions that a local psychiatrist suggested he rent an unoccupied suite in the psychiatrist’s office building. The rent is more than Frank can handle by himself unless he quits his job with the family service center and devotes full time to the private practice. Unwilling to make that commitment, he remarks to his colleagues that the three of them might move into the suite, split the office costs, and set up independent part time private practices. Managed care may work with group practices, so perhaps now is the time for them all to fulfill their dreams of private practice on a part-time basis.

A. Monday morning all agree to meet with the landlord and sign the lease. Private practicing psychologists must make many decisions. What information will you put on the office door, on letterhead, in the yellow pages? How will you present and advertise the practice(s)? What are the main ethical issues in these decisions of how psychologists present themselves to the public? To what extent will the possible misconduct of your colleagues make you vulnerable to lawsuits or board complaints?

Resources:
APA Ethics 5.01 – Avoidance of false statements
NASP Ethics II (A) (2 & 3) – accurate representation; use of affiliations
TSBEP Rule 465.6 - Listings, etc.

EXAM QUESTION 1. Is the following advertising copy legal and ethical?
Paul Pureheart, Ph.D., Licensed and Certified in Clinical Psychology

A. Yes, provided that it does not violate truth-in-advertising laws.
B. Yes, but only if Dr. Pureheart has a doctorate or re-training in clinical psychology as a specialty.
C. No, TSBEP allows for specializations to be listed only if the practitioner has achieved diplomate status from ABPP.
D. No, because the listing does not specify the agency or institution that issued the specialization certificate.
B. Move-in day finally arrives. The suite consists of a waiting room, two 9x12 offices, a group room, and a business office with storage/record room. Fortunately, there are few times when all of you will be using the office at the same time. You decide to meet together for an hour every Thursday afternoon to hash out office matters or consult, as appropriate. One of your first concerns is whether to hire a secretary part-time. Frank has been counseling a woman at the family service center. He remarks that this client has been looking for part-time work and has a secretarial background. The woman has hinted to Frank on several occasions that if Frank ever went private, she could do secretarial work for him in exchange for therapy services. What ethical issues are involved in considering such a hire? Could this be considered a dual relationship? How are dual relationships defined? Are all dual relationships unethical? What are the criteria that determine whether a dual relationship is unethical?

**Resources:**
APA 6.05 - Barter only if….
APA 3.05 - Multiple Relationships
APA 3.06 – Conflict of Interests
TSBEP 465.15 (b) (5) – do not barter unless…..

**EXAM QUESTION 2.** What is the TSBEP rule regarding bartering for professional services?
A. It is only permitted if the goods or services exchanged are of equal monetary value.
B. Barter is permitted, but the terms of the barter must be clearly specified in a written fee agreement.
C. Barter is prohibited when it is clinically contraindicated or when such a relationship might be an exploitative or harmful dual relationship.
D. Barter is prohibited in all cases.
C. Frank has his first appointment with a new counseling client, Mrs. Ima Trouble. She says she is fed up with her marriage and is going to divorce her husband, Rocky, if things don’t get better. However, she seems ambivalent about ending her marriage and reports unhappiness about the direction her life is taking. It occurs to Frank as he is taking notes on his new client that he and his professional colleagues in the new office may want to coordinate their use of forms for the sake of office efficiency. Frank asks the group whether they each want to use the same procedures and forms for intake, informed consent, consent to release records, etc. What do ethical codes say must be discussed with clients at the earliest opportunity with regard to obtaining informed consent to psychological services? Where could you find a good informed consent document to consider using? Ethically, how can a psychologist ensure that consent is indeed “informed”? And what happens to consent if after counseling begins you want to change what you are doing with a particular client? Legally, what are the criteria for consent?

**Resources:**
- APA 3.10 - Informed Consent
- NASP III (A) (3) - informed consent
- NASP III (A) (11) - discuss limits of confidentiality
- NASP III (B) (2-4) – obtaining student consent for services; changes in services
- NASP III (C) - obtaining parent consent
- TSBEP 465.1 (4) - definition of “informed consent”
- TSBEP 465.11 – Informed Consent, etc.
- TSBEP 465.17 (b) – Treatment plans
- TX Health & Safety Code, Chapter 591 - criteria for consent

**EXAM QUESTION 3.** After achieving moderate success overcoming anger due to marital problems, Mrs. Trouble later discloses that she has been relying on alcohol and benzodiazepines to reduce her anxiety. She wants to address her substance abuse in treatment. According to TSBEP rules, you should now

A. document the specific goals, techniques used, and probable duration of treatment and explain these changes to the client.
B. obtain the client's signed consent to substance abuse treatment.
C. do nothing additional, provided that you initially obtained the client's consent to treatment at the beginning of the relationship.
D. both A and B
EXAM QUESTION 4. Mrs. Trouble informs you that a previous psychologist initiated sexual contact on several occasions during treatment sessions. Your client is very traumatized by this. She refuses to sign a release of information that might enable you to discuss the previous psychologist’s sexual misconduct with anybody. Which of the following best describes your obligation?

A. In the absence of a written release, you are prohibited from discussing this with anybody.
B. The law is similar to the statutes governing reporting child abuse. Thus you are required to report the name of the offender and the name of your client to TSBEP and/or Adult Protective Services.
C. You are required by law to make a report to the local district attorney, but without a written release from your client you may not divulge the name of the victim.
D. You should contact the psychologist and hear the other side of the story before involving law enforcement authorities.

D. A few sessions later, Ima asks Frank what he is writing. She asks to see his notes about her and wants to know what becomes of her record. She says her medical doctor has given her information about how he keeps her health information private under some new law called HIPAA. What do you tell her about seeing her record? Do you let her see it? What are the rules of your profession about a patient’s access to the records? What is state law on this matter? Ethically, what is the main purpose of keeping records? What are the professional standards for record retention for your profession? What are the legal requirements for record retention? What information goes into a client’s records? What is the minimum information that should be in a session note in a client’s chart? Can you keep “process notes” separately? How should records be stored? What are the ethical/legal concerns about keeping records electronically? If you don’t know the answers to these questions, how would you find out?

Resources:
APA 4.01 – Maintaining Confidentiality
APA 4.04 – Minimize Intrusions on Privacy
APA 6.01 - records
NASP III (A) (9-11) – confidentiality
NASP III (C) (6) – records
TSBEP 465.1 (12) – definition of “records”
TSBEP 465.12 (i) – confidentiality of information not germane
TSBEP 465.22 – records
TX Health & Safety Code, Chapter 611.0045 – patient access to records
TX Health & Safety Code, Chapter 181 – records privacy under HIPAA
EXAM QUESTION 5. According to TSBEP, what information must be included to document a psychotherapy session?

A. The date, time, duration of the session, who attended the session, the client's major concerns, and an appraisal of the client's progress or current well-being

B. All of the above, plus a summary of the practitioner's tentative opinions and a description of the treatment interventions used

C. Information necessary to permit planning and treatment continuity by another therapist and sufficient to permit adequate administrative, regulatory, or judicial review

D. The date, the nature of the service, the fee charged/collected, and the date of the next scheduled appointment

**Ethical/Legal Areas Addressed**

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Chapter 2  Lots of Trouble

A. Mrs. Trouble tells Frank she wants custody of the couple’s 15 year-old daughter, Lottie, if the marriage ends. Her attorney told her that she should seek counseling to show that she (Mrs. Trouble) is the better-fit parent to raise Lottie. Her lawyer plans to subpoena her counselor, Frank, to testify as an expert on behalf of Mrs. Trouble in the custody case. Can Frank accept this new assignment? Are there professional guidelines concerning testifying in custody cases that you could read and consider (and if so, where would you find these)?

Resources:
APA 3.05 (b) – resolving potentially harmful multiple relationships
APA 4.05 – Disclosures
APA 10.02 (b) – resolving potentially conflicting roles
NASP III (A) (7) – avoid dual relationships
NASP III (A) (9) – release of confidential information
NASP III (E) (3) – explaining role to other professionals
TSBEP 465.1 (3) – Definition of “Forensic Services”
TSBEP 465.13 (b) – Dual Relationships
TSBEP 465.16 (c) (5) – base opinion on examination
TSBEP 465.18 – Forensic Services
TX Health & Safety Code 611.006 - disclosure of confidential information

EXAM QUESTION 6. What regulations govern your testimony in the above case?
A. TSBEP rules regarding forensic psychology apply regardless of whether testimony is offered as a fact witness or an expert witness.
B. TSBEP rules regarding forensic psychology apply only when the psychologist has been retained as an expert witness.
C. Under TSBEP rules, the licensee may not testify unless both parents permit it.
D. Under HIPAA rules, only PHI (personal healthcare information) may be disclosed.

B. Mrs. Trouble requests couple marital counseling in addition to her individual sessions. Should Frank agree to this arrangement? Does this change who the client is? How could you reason through this problem to arrive at an ethical solution?

Resources:
APA 4.02 – Limits of Confidentiality
APA 10.02 - Therapy involving families
TSBEP 465.11 (d-f) – clarifying role; confidentiality

EXAM QUESTION 7. According to TSBEP rules, in this case you must
A. have Mr. Trouble complete his own intake information, HIPAA release forms, etc.
B. open a separate chart for Mr. Trouble.
C. clarify what your role will be and what Mr. And Mrs. Trouble can each expect from you under this new arrangement.
D. simply document that Mr. Trouble attended the session with Mrs. Trouble.
C. Several sessions later, Mrs. Trouble reports to Frank that she is unable to sleep and, in fact, has not slept in the last five days. She also tells Frank that she and her husband have been having terrible fights and that last night she thought sure someone would be physically injured. She reports that Mr. Trouble has become agitated and is increasingly aggressive with Lottie, their teenager. She says she has reported his aggressive behavior toward Lottie to Children’s Protective Services. Frank has a vague memory that he has to do something even if she did talk to CPS. Does he? What are the reporting requirements here? Do you report the parents’ domestic violence? To whom and how? What are your professional responsibilities with regard to Mrs. Trouble’s reported sleeplessness?

**Resources:**
- APA 4.05 – Disclosures
- NASP IV (A) (2) – child’s welfare is primary concern
- TSBEP 465.12 (d) – compliance with applicable confidentiality laws
- TX Family Code 261.101 – Persons required to report abuse
- TX Family Code, Chapter 71 – Family violence
- TX Health & Safety Code 611.004 (a) (2) – disclosure in case of danger
- In re Himmel, 533 N.E. 2d 790 (Ill.1988).

**EXAM QUESTION 8.** When psychologists suspect child abuse, a report

A. must be made personally, within 24 hours.

B. must be made personally, within 48 hours.

C. must be made within 48 hours, by the psychologist or someone designated by the psychologist.

D. is not mandatory, under the Zezulka decision in the Texas Supreme Court.

D. Because of her busy schedule, Mrs. Trouble has taken to sending Frank emails and calling him at home using her cell phone. Are there ethical problems with the use of this modern technology? Where would you look for guidelines on this situation?

**Resources:**
- APA 4.02 – Discussing the Limits of Confidentiality
- APA and TSBEP policies on telehealth
- NASP IV (E) (6) – privacy of electronic transmissions
- TSBEP 465.12 (a & b) – safeguarding privacy & informing clients

**EXAM QUESTION 9.** What is the TSBEP policy on electronic communication, or telehealth services?

A. TSBEP has no policy.

B. TSBEP rules apply only if the services are being provided in Texas.

C. Psychologists must notify clients of the limitations of confidentiality protections.

D. TSBEP rules of practice are not applicable to telehealth.
E. Ima Trouble comes to see Frank for the next session and surprises him by bringing him a pair of diamond cufflinks. She says she looks forward to working with him as she learns to take charge of her life. She tells Frank he is her only true friend. Frank finds himself attracted to her newly understanding attitude. What sources can he tap to ensure he is not falling into a harmful dual relationship? Would your answer be different if a year had elapsed since therapy ended and Frank was at a church function Ima attended?

Resources:
APA 2.06 (b) - appropriate measures for personal problems
APA 3.05 – Multiple Relationships
TSBEP 465.13 (b) – dual relationships

EXAM QUESTION 10. Is it permissible for Dr. Familia to respond to Mrs. Trouble’s offer of friendship if they meet at a church function after therapy is terminated?
   A. Yes. Once the therapy has ended, there is no dual relationship.
   B. Yes, but only if the therapy has been terminated for at least two years.
   C. Yes, but only if Dr. Familia can determine that there is no potential that this friendship would harm or exploit his former client.
   D. No, it is not permitted.

Mrs. Trouble complains to Frank that her 15 year old daughter, Lottie’s, behavior problems have become more extensive than she or her husband can handle. Frank obtains appropriate consent from Mrs. Trouble to refer the child for a comprehensive psychological evaluation by Dr. Mini Esquella

Ethical/Legal Areas Addressed

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Chapter 3  

A. Mini meets with both Mr. and Mrs. Trouble and tells them that Lottie might be eligible for similar testing services through Lottie’s school district. However, the Troubles prefer to pay for private testing. During testing, Mini begins to suspect that Lottie has the potential for dangerous acting-out behavior. Mini is developing a new test to better predict the probability of various kinds of violent behavior. She is very proud of her new accomplishment. She calls her test the BUMBLE. She wonders if she could add the BUMBLE to her test battery with Lottie. Ethically, under what circumstances could Mini use the BUMBLE with Lottie?

Resources:
APA 2.01 – competence
APA 9.03 – Informed Consent in Assessments
APA 9.05 - Test Construction
NASP IV (C) (2 & 4) - standardized, research-based instruments
TSBEP 465.9 - Competency
TSBEP 465.16 – Evaluation, reservations about accuracy

EXAM QUESTION 11. You plan to add the BUMBLE to Lottie’s test battery. Which of the following concerns would NOT be covered by an ethics code?
   A. Whether the BUMBLE is reliable and properly normed.
   B. Whether the parents have consented to the use of such an experimental procedure
   C. Whether you have the competencies to develop and interpret the test.
   D. Whether the test has been validated for the purposes for which it is intended.
   E. Whether the test can be used for educational programming purposes.

B. Mini has always enjoyed working for the schools because of the children and the pleasant working relationships, and she wonders now if she can let the school bear the burden of keeping her private practice records when parents consent for her to send their children’s reports to the school. Then she could destroy the test protocols so they didn’t take up her private office space. Why do you see red flags flying?

Resources:
APA 3.11 – services delivered through organizations
APA 6.01 & 6.02 – record keeping
APA 9.11 – Maintaining Test Security
NASP IV (D) (5) – comply with regulations pertaining to records
NASP V (A) (1) – separation of roles
NASP V (A) (2) – decline remuneration from clients served by school
TSBEP 465.1 (3) – Definition of “Forensic Services”
TSBEP 465.13 – dual relationships
TSBEP 465.18 – Forensic Services
TSBEP 465.22 (d) – retention of records
TSBEP 465.38 (7) – Compliance with Applicable Education Laws
EXAM QUESTION 12. Licensed psychologists who are in private practice and also contract with public schools
   A. are expected to meet licensing board rules for content and retention of records.
   B. may offer private services to district children without regard to whether such services are offered by the school.
   C. need not explain their test results to parents because the school does that.
   D. need have no concern for dual relationships or conflict of interest because their licenses allow for practice in both settings.
   E. are required by law to be an LSSP.

C. Lottie tells Mini that she has been “into” drugs for a few years. She is currently obtaining drugs from a fellow student, whom she names. She is also having sexual relations with this young man of 18. She does not want her parents to know any of this. What are Mini’s ethical, legal, and practical obligations with respect to this information? Is this statutory rape? Are there instances when you can ethically/legally treat children without parent permission? Is there anything here that must be reported? Must you (may you) report criminal activity?

Resources:
APA 4.04 – Minimizing Intrusions on Privacy
APA 4.05 – Disclosures
NASP III (A) (4) resolve conflicting interests
NASP III (A) (9-11) – protecting confidentiality
NASP III (C) (2) – reporting to parents
NASP IV (A) (1 & 2) – primary client is the child
NASP IV (B) (4) – clarifying services in advance where loyalties are conflicted
TSBEP 465.12 - confidentiality
TX Family Code 32.004 – Consent to counseling by child
TX Family Code, Chapter 261 Child Abuse or Neglect

EXAM QUESTION 13. If a child admits during counseling that she abuses drugs but does not want her parents to know about the drug abuse, what should you do ethically?
   A. Withhold the information from the parents because you have that right under the Texas Family Code, Chapter 32.
   B. Tell the parents, because you have that right under the Texas Family Code, Chapter 32.
   C. Follow whatever confidentiality agreement you made with the child and parents during informed consent.
   D. Report the information to Children’s Protective Services
   E. Report the information to the principal.

EXAM QUESTION 14. If you believe a child’s sexual or drug behavior constitutes imminent harm to the child, to whom can you report this under the Texas Health and Safety Code, Chapter 611.004?
   A. only the parents
   B. only the police
   C. only the child’s physician
   D. only B and/or C of the above
   E. any of the above
D. No sooner does Mini complete the evaluation and report than she learns through her school district that Lottie’s teacher has referred Lottie for testing because of her behavior problems. The Troubles consent to the testing in the school and Mini is assigned to do the testing as part of her LSSP duties. However, Mr. and Mrs. Trouble do NOT give permission for Mini to share her private practice test results on Lottie with the school. Mini has a dilemma. How could this have been prevented?

**Resources:**
APA 1.03 – conflicts, etc.
APA 3.09 - Cooperation with Other Professionals
APA 3.11 - services delivered through organizations
NASP III (A) (4) - resolve conflicting interests
NASP III (E) (3) - explaining role and working relationships
NASP IV (B) (3 & 4) - clarifying role
TSBEP 465.1 (1) - Definition of “Client”
TSBEP 465.10 - Basis for professional judgments
TSBEP 465.11 (d) - clarifying role to each party

**EXAM QUESTION 15.** In cases where a school psychologist is dually employed in independent practice and in a school district, the responsibility for informing all parties of potential conflicts and attempting to resolve them belongs to
A. the parents.
B. the school district.
C. the psychologist.
D. the psychologist and the district jointly.
E. the provisions of school law.

E. Eventually Mr. and Mrs. Trouble relent and allow Mini to coordinate all the testing on Lottie. Later, in the teachers’ lounge Mini is approached by Lottie’s teacher and by another teacher who is Mrs. Trouble’s cousin. They heard Mini was assigned the diagnostic workup on Lottie and want to know if the child has told Mini about the child’s drug usage or the family squabbles? What would you reply? The principal also demands to be kept abreast of information Mini gets from Lottie. He’s convinced she is part of a gang that has been vandalizing the school after hours. What obligations does Mini have to report to the principal?

**Resources:**
APA 3.11 – services delivered through organizations
NASP III (A) (10) – professional “need to know”
NASP IV (B) (3) – establish clear roles within the system
TSBEP 465.11 – clarifying role
TSBEP 465.12 (d) – comply with applicable confidentiality laws
TSBEP 465.12 (e) – disclosure without consent
TX Health & Safety Code, Chapter 611 – Confidentiality of Mental Health Records
**EXAM QUESTION 16.** If during a counseling session a child confesses to vandalism, may you share that information with the principal?

A. No, all information obtained in counseling is confidential.
B. Yes, if you determine the principal, teacher, or relative has a need to know.
C. Yes, as LSSPs are expected to maintain cooperative relationships with other professionals.
D. Yes, to law enforcement and medical personnel, if the criminal behavior is considered dangerous to others.
E. Yes, but only after telling the client you are informing others.

During their parent conferences, Rocky Trouble has acknowledged to Mini that he has anger management problems. After talking with him further, Mini decides to refer Mr. Trouble to her office colleague Dr. Paul Pureheart.

**Ethical/Legal Areas Addressed**

- Assessments
- Experimental procedures
- Avoiding harm
- Confidentiality
- Resolving conflicting interests
- Establishing clear roles
- Competence
- Professional relationships
- Reporting to parents
- Consent to counseling by child
- Services delivered through organizations
- Retention of records in private practice
Chapter 4 Rocky Road

A. Paul and Rocky seem to hit it off well in Mr. Trouble’s individual sessions. Rocky has many of the aggressive characteristics Paul has encountered in his forensic work, so he’s on familiar ground. Frank, Paul, and Mini share information in their Thursday consultation session in an effort to better understand the family’s problems and develop a coordinated treatment plan. Is this communication ethical? Legal? Is this an appropriate matter to put in a clinical chart? In whose chart should it be placed? Should the chart note be signed? By whom?

Resources:
APA 3.09 – Cooperation with other Professionals
APA 4.05 – Disclosures
APA 4.06 – Consultations
TSBEP 465.12 – Privacy and Confidentiality
TSBEP 465.22 – records
TX Health & Safety Code, Chapter 611.004 – Authorized Disclosures

EXAM QUESTION 17. Under what conditions is a coordinated treatment plan legally appropriate?
A. A coordinated treatment plan can be used where there is a provider in charge of treatment and those working for her.
B. A coordinated treatment plan can be done by an agency.
C. A coordinated treatment plan can only occur in a hospital setting where a multidisciplinary team works with the patient.
D. A coordinated treatment plan can work across agencies so long as each person is working on the same problems of the patient.

B. Although Mini provided the Troubles with a copy of Lottie’s psychological evaluation report, Mr. Trouble, Lottie’s father, tells Paul he wants to know what his daughter has said about him, and demands that Paul get him a copy of Mini’s record on Lottie, including the psychological test protocols themselves. How should Paul handle Mr. Trouble’s demand? Is Lottie’s consent necessary? Anyone else? As part of Mini’s notes there is material that Mini and Paul believe may be harmful to Lottie’s mental health if released to Mr. Trouble. How do Paul and Mini proceed?

Resources:
APA 4.04 – Minimizing Intrusions on Privacy
APA 4.05 – Disclosures
APA 9.04 - Release of Test Data
NASP III (A) (9-11) – confidentiality
NASP III (C) (6) – parents rights to records
TSBEP 465.12 (i) – confidentiality of information not germane
TSBEP 465.22 (c) – access to records
TSBEP 465.38 (7) - Compliance with Applicable Education Laws
Family Educational Rights and Privacy Act (FERPA)
TX Health & Safety Code 611.0045 - Right to Mental Health Record
EXAM QUESTION 18. What do you do with Mr. Trouble’s request for Lottie’s records?
A. You give him the records as Texas law lets parents see the records of their children’s treatment.
B. You tell the father that Federal rules under HIPAA do not allow him to see anything about his daughter’s treatment.
C. You tell him you do not keep records and that you cannot give him what you do not have.
D. You tell him that he has to have the child’s mother’s consent as she is the parent who brought the child to treatment.

C. In one of Paul’s therapy sessions with Mr. Trouble, he (Mr. Trouble) discloses that he is HIV positive. He tells Paul that he has had numerous sexual partners and has never revealed this to his wife. He also tells Paul that he plans to continue to have unprotected sex with his wife and his other partners. What should Paul do with this information? In addition, Mr. Trouble stated on his intake history form that he has committed some criminal acts that have not been reported and with which he has not been charged. What should you do with this information, if anything? If that behavior involved unreported sexual abuse from several years ago, must you (may you) report that behavior? To whom? Would it make a difference if the abuse involved a minor?

Resources:
APA Code 4 – Privacy & Confidentiality
TSBEP 465.12 – Privacy & Confidentiality
TX Health & Safety Code – Chap. 81.103
TX Health & Safety Code – Chapter 611 – exceptions to confidentiality
TX Family Code – Chapter 261 – Child Abuse or Neglect
Attorney General Opinion No. DM-458.

EXAM QUESTION 19. Mr. Trouble reveals that he is HIV positive, that his partners do not know his HIV status, and that he plans to continue to have unprotected sex. What do you do with this information?
A. Tell the wife, as under Texas law she is a spouse, and you have the right to inform her of his dangerous behavior.
B. Tell her because he is a danger to her and under confidentiality laws you can tell the intended third party of a danger to them.
C. Don’t tell her because you have no legal permission for telling her of her partner’s HIV status.
D. Tell the wife’s physician that you believe her husband is contagious and presents a danger to others with his threatened behavior.

EXAM QUESTION 20. What are the standards for timely release of a patient’s records?
A. The State of Texas statutes do not specify any time for release of records.
B. Federal rules do not specify that records must be released.
C. The TSBEP requires that a records request by a patient must have a response within 15 days.
D. There is an unresolved conflict between state law and Federal rules on records release.
D. Paul has been supervising a Provisionally Licensed Psychologist at the medical center. The PLP expresses an interest in starting a men’s anger management group. Paul has several private clients, including Mr. Trouble, who are excellent candidates for this group so he invites the PLP to help him establish such a group at the private practice office. Are there ethical/legal problems with this arrangement? Does it qualify as part of the PLP’s formal experience toward licensure as a psychologist? How is the PLP’s supervised status presented to clients? How is supervision documented?

Resources:
APA 10.01 (c) - informed consent regarding trainees
TSBEP 463.11 – requirements to become licensed psychologist
TSBEP 465.2 – Supervision
TSBEP 465.2 (d) – supervision documented in writing
TSBEP 465.11 – Informed consent, etc.

EXAM QUESTION 21. You and your co-therapist divide the patient’s charts and write notes after each group session. Each of you signs only the chart notes that you write.
   A. Federal Rules under HIPAA require each therapist sign every note in a patient’s chart to ensure that there is a review of the note by each therapist.
   B. In TSBEP Rules there is no requirement that a note be signed by anyone.
   C. Texas statutes require that each chart note be signed only by the person who writes the notes and may not be signed by other persons.
   D. There is a conflict between HIPAA Rules, Texas statutes and TSBEP Rules regarding who must sign a chart note.

EXAM QUESTION 22. When you have a supervisee as a co-therapist how do you represent the status of the supervisee to patients?
   A. The supervisee is simply introduced as a co-therapist since to say that they have a supervised status degrades their authority with the group members.
   B. The supervisee cannot participate in the group unless all members agree in writing to be a part of the training program for the supervisee.
   C. There is no requirement in any law or rule that says the supervised status of the supervisee needs to be addressed with patients.
   D. The supervised status of any co-therapist must be clearly identified to all patients who will be seen by the therapist
E. Mr. Trouble responds well in the group. The men share common frustrations and offer each other support with anger management techniques. Paul is increasingly comfortable letting the PLP direct the group alone. However, after about 6 weeks, Mr. Trouble tells Paul in their individual session that information he (Mr. Trouble) revealed in the group got back to his employer. Mr. Trouble is furious and threatens to sue for breach of confidentiality, blaming the “leak” on the PLP. It’s possible a group member was the source of the “leak.” How should Paul handle this ethical problem, according to the ethics code? How can such problems be avoided? If the matter goes to court and Paul’s records of the group are subpoenaed, how can the confidentiality of the other men be protected? Who will Mr. Trouble sue?

Resources:
APA 1.03 to 1.05 – conflicts; ethical violations
APA 4.02 – discussing levels of confidentiality
APA 10.03 – Group Therapy
TSBEP 465.11 - Informed Consent
TSBEP 465.12 - Confidentiality

EXAM QUESTION 23. Mr. Trouble is threatening to sue for breach of confidentiality. What do you do?
A. You cannot tolerate having a patient who is unhappy in your care so you fire the patient for threatening to sue.
B. You tell the patient that neither you nor your co-therapist told anyone about his treatment (which is true), talk to staff about the need for confidentiality, and remind the group members about the need to keep what goes on in group private.
C. You break up the group and move all the patients to other treatment groups since the trust lost by any breach of confidentiality destroys any therapeutic rapport you have with them.
D. You take no action since you have done all you can initially to keep information private and what patients do with information is not your responsibility.

F. Mr. Trouble is also angry because the PLP was listed as a provider of the group treatment on the billing statement and the insurance company will only pay if an unsupervised licensed individual provided the services. Who should be listed as the provider in such cases? Additionally, the insurance company questions paying for anger management sessions since the policy only covers services for mental illness. Could Mr. Trouble’s sessions be billed as therapy for depression in order to help Mr. Trouble with the financial coverage? Could Paul waive Mr. Trouble’s co-payments to help with his (Mr. Trouble’s) financial problems?

Resources:
APA 6.04 - Fees & Financial Arrangements
APA 6.06 – Accuracy in Reports
TSBEP 465.15 – Fees & Financial Arrangements
TSBEP 465.37 – Compliance with Law
EXAM QUESTION 24. When you bill for services in which a supervisee is involved what steps must you take?
   A. Only those persons who are licensed should sign any bills that are rendered otherwise an insurance company may not pay the bill.
   B. Only the person who actually did the work and was in the room may sign a bill.
   C. The head of the service, clinic, or agency is the only person who should sign and submit a bill.
   D. Psychologists may work only on a cash basis and not do any billing.

   Ethical/Legal Areas Addressed

   Confidentiality in groups  Withholding portions of records
   Billing                  Conflicts between rules and laws
   Consultation             Release of records
   Reporting of HIV         Release of test data
   Reporting of abuse       Reporting of criminal behavior
A. No sooner does Paul get off the phone with the insurance company than he gets a letter from a records firm. They tell Paul that Dewey, Cheatem, and Howe, a law firm, has subpoenaed Mr. Trouble’s records because the family was involved in an automobile accident and that a lawsuit has been filed. The records company gives Paul 10 days to respond. They indicate they will be happy to send someone to Paul’s office to copy the material so that he does not have to bother his staff with that tedious chore. What would you do? Is this a subpoena? How do you respond to a subpoena? Can you ever resist a subpoena? If so, how? Does a therapist have a fiduciary relationship with a patient? What is the nature of your relationship to the patient?

Resources:
APA 4.05 - Disclosures
TSBEP 465.12 - Privacy & Confidentiality
TX Health & Safety Code, Chapter 611.004 – Authorized Disclosures

EXAM QUESTION 25. You are served a subpoena duces tecum for your records from a Texas District Court that indicates you are to supply all relevant notes, records, files, materials, etc., that relate to your treatment of Mr. Trouble. What do you do?
A. Ignore the subpoena since you know that the Texas Board requires a court order for you to release any records.
B. You call the lawyer who issued the subpoena and tell her that you cannot give her the records since the lawsuit does not concern a mental health matter.
C. You call the judge and tell her that you want a lawyer to represent you in dealing with this records request.
D. With your patient’s permission you call his lawyer and tell her to work out with the other attorney what you can provide under the subpoena.

B. Paul notes that the request for records includes a copy of a release form that appears to be Mr. Trouble’s signature when he compares it with the intake form he has in his file. What elements should a release form contain? Some of the information Paul has included in Rocky’s record contains diagnostic impressions and inferences that he believes would be harmful to Rocky if disclosed. The record also contains Rocky’s descriptions of his illegal behavior. Paul removes these notes from the record. What are the implications for taking information out of a file after you get a request for information? How about before you get a request?

Resources:
APA 4.04 – Minimizing Intrusions on Privacy
TSBEP 465.12 (i) – include only if germane
TSBEP 465.22 – records
**EXAM QUESTION 26.** In your notes you have information that you believe will be harmful if released to your patient. What can you do about this?

A. You cannot keep any information about your patient from the patient.
B. HIPAA rules require that you give the patient a copy of all the information you have in writing about the patient.
C. A patient has no right to a copy of his clinical records, as that is professional information.
D. You must tell the patient in writing that you are withholding some information because you believe it would be harmful to his mental health.

**EXAM QUESTION 27.** Mr. and Mrs. Trouble, what would you do when the husband requests a copy of his file?

A. Since you are treating him you have to release a copy of your treatment file to him and do so without making any changes in it, as that would be unethical and illegal.
B. Because there were notes in the file about the spouse who did not consent to the release you delete from the copy any references to the spouse.
C. HIPAA rules require that you keep separate charts on each patient and forbid “couple files”, “family files”, or “group files.”
D. The law on release is unclear on what you can release and to whom when it comes to couple or families.

C. Rocky Trouble comes into the office and wants to get copies of his record. The office manager and Rocky get into a conflict about what he can have and when he can have the records. She knows his history of threatening behavior, having talked with Ima while Ima waits for her appointment with Frank Familia. The office manager tells Rocky that she thinks he is a wife abuser and Rocky leaves in a huff, muttering under his breath that she will find out just which way is up and soon. Is there a problem here? Is a psychologist responsible for office staff and what they find out from patients on their own?

**Resources:**
APA 2.05 Delegation of Work to Others
APA 3.04 – Avoiding Harm
TSBEP 465.12 (a) – use business practices to safeguard privacy

**EXAM QUESTION 28.** Your office manager told the husband of the couple you saw in treatment that she thinks he is a drunken abuser who takes advantage of his wife. She knows this because of what she has heard in the office waiting room and by typing the therapy notes for you. He complains to your licensing board about this breach of confidentiality. He went home and beat up his wife again for telling about the abuse in their home.

A. The Board will dismiss the complaint since this was not new information about the husband. He knows what he is.
B. The wife has grounds for a complaint not the husband since she got beat up as a result of the breach of confidentiality.
C. Both the wife and the husband can complain about the breach of confidentiality.
D. There is no duty on the part of the professional to control the office staff since they are not professionally trained.
D. Despite Rocky’s obvious problems, Paul feels he is making progress. He is surprised to learn that the Troubles have separated. Ima Trouble has a Temporary Restraining Order to keep Rocky from their house. Rocky asks Paul to file a report with the court to indicate he is not a danger to his wife and daughter, including reasons why he could be around them. Is there a problem if Paul files a report with the court? Paul figures that this can do no harm since, after all, the standard for admission of information in a child custody matter is the best interests of the child, and what Paul has to say in the matter will focus on what is best for Lottie. What has Paul gotten himself into? Paul believes that fairness requires that he give copies of his report to the other side of this hotly disputed case. Does this fairness and wish for balance create problems for Paul?

Resources:
APA 2.01 – Boundaries of Competence
APA 4.04 – Minimizing Intrusions on Privacy
APA 4.05 – Disclosures
NASP III (A) (9) - releasing confidential information
NASP III (D) (5) - adherence to laws
TSBEP 465.18 – Forensic Services
TSBEP 465.22 (c) (3) – release of information
TX Health & Safety Code, 611.004 – Authorized Disclosures
Rost v. State Board of Psychology, 659 A.2d 626 (Pa. 1995)

EXAM QUESTION 29. Rocky Trouble asks Paul to file a report with the court to indicate he is not a danger to his wife or daughter. If you were Paul you should
   A. submit the report because your client has requested you do so.
   B. submit the report because it’s relevant to a child custody matter.
   C. don’t submit the report until you have psychologically examined Mr. Trouble.
   D. don’t submit the report because you can’t function as an advocate in this matter.

E. It has been a hectic first year of private practice for our fledgling trio. How can they ensure on a continuing basis that they are meeting the best ethical, legal, and risk management standards of their profession?

EXAM QUESTION 30. What is the best source of information regarding new developments in rules of practice for psychologists in Texas?
   A. Workshops on ethics and risk management
   B. TPA and APA websites
   C. TSBEP newsletter
   D. TSBEP website

Ethical/Legal Areas Addressed
Response to subpoena
Confidentiality
Responsibility for office staff
Release of information
Contents of records
Alteration of records
Forensic reports
A Problem Based Learning (PBL) Approach to
Applied Ethics and Law for Texas Psychologists

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