

Ethical and Risk-management Issues in the Human Services

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Evolution of Ethics in the Human Services

- 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_25HoVYzPWPIStowpe6
- 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: The Concept

“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.

Privacy and Confidentiality

- The concept of **privacy**
- The concept of **confidentiality**
 - Intentional disclosures
 - Unintentional disclosures
- The concept of **privileged communication**

Duty (and Privilege) 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

Digital Trends in Social Work Practice: The Changing Nature of a Profession

- What do we mean by **relationship**?
- Who do we aim to **serve**?
- What do we mean by **privacy**?
- What are the **boundaries** of professional-client relationships?
- What do we mean by **informed consent**?
- How do we manage and access clinically relevant **information**?

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Terminology

- Internet-supported Intervention
- web-based therapy
- e-interventions
- computer-mediated interventions
- online therapy
- online counseling
- technology assisted distance counseling (TADC)
- e-therapy/e-counseling
- cybertherapy/cybercounseling
- e-health
- psycho-technology
- Tele-Health
- Internet counseling
- Therap-E-Mail

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Forms of Electronic Services and Interventions

- E-therapy chat (live)
- Moderated forum
- Web-based psychoeducation
- Self-guided Web-based interventions with automated feedback (e.g., anxiety, phobia, self-esteem, anger, weight loss)
 - Human support
 - No human support
- Video conferencing
- Social networking
- Telephone therapy
- Avatar therapy
- Expert systems
- Email exchanges
- Text messages
- Client Blogs
- Client Twitter

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Examples of e-Therapy Websites

- <http://www.asktheinternettherapist.com/>
- <https://www.breakthrough.com/>
- <https://virtualtherapyconnect.com/>
- <http://www.talkspace.com/>
- <https://www.buddyapp.co.uk/>
- <http://www.onlinecounseling.org/>
- <https://pfh.org/virtual-world/>
- <http://www.youtube.com/watch?v=bYYc9Dk2NQk>
- <http://www.wfaa.com/news/health/Dallas-center-uses-avatars-in-virtual-world-to-help-autistic-children-116899863.html>
- <http://t2health.dcoe.mil/video>
- <http://www.veterantraining.va.gov/movingforward/#>
- <http://t2health.dcoe.mil/apps/virtual-hope-box>
- <http://www.usctehealth.com/>
- <http://www.vyzit.com/>

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Examples of Electronic Services and Interventions

- Computerized expert systems: <http://easydiagnosis.com/cgi-bin/expert/start.cgi?mod=Depression>
- Open clinical notes: <http://www.bidmc.org/Patient-and-Visitor-Information/OpenNotes.aspx>
- MedHelp Moody Me smartphone app: <http://www.medhelp.org/land/mood-diary-app>
- M3 score for mental health monitoring (iPhone/iPad and Droid): <http://www.whatsmym3.com/Default.aspx>
- <http://www.crisistextline.org/>
- Beating the Blues: <http://www.beatingtheblues.co.uk/patients/>
- Addiction intervention: <http://chess.wisc.edu/chess/projects/AddictionChess.aspx>
- PTSD intervention: <https://www.youtube.com/watch?v=PbWQfyW3Vqc>
- SPARX for treatment of depression: <https://www.youtube.com/watch?v=pnFAtpZ-sl0>
- Transitional services for adolescents: <http://www.secondnature360.com/services/>
- HIPAA Compliant Live Chat: <http://help.livehelpnow.net/article/1/3518/livehelpnow-pci-certification-hipaa-compliance-and-safe-harbor-compliance>
- Lifeline Crisis Chat: <http://www.crisischat.org/>
- Unsuicide: <http://unsuicide.wikispaces.com/Online+Suicide+Help#.UdHC2py8NEM>
- Facebook and SAMHSA: <http://www.samhsa.gov/newsroom/advisories/1112125820.aspx>
- Veterans Administration: <http://www.va.gov/health/newsfeatures/20120813a.asp>
- Personal Investigator: <http://aplayspace.com/mm/pi>
- Peer consultation: <http://www.peeradigm.com/>

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Electronic Services: Informed Consent

- Verification of client identity
- Capacity to consent (e.g., age, competence)
- Potential risks (e.g. confidentiality breach, emergency services, interruption of services, language, literacy)

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Electronic Services: Privacy and Confidentiality

- Privacy protection and encryption
- Adherence to relevant laws and regulations
- Conducting Google search
- Confidentiality agreements when conducting group treatment
- Exceptions to clients' confidentiality rights (e.g., disclosures to protect clients from self harm, third parties, mandatory reporting, court orders)

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Electronic Services: Boundaries, Dual Relationships and Conflicts of Interest

- Social networking (Facebook, LinkedIn)
 - Current clients
 - Former clients
 - Former Facebook friend becomes client
- Social worker self-disclosure
- Social worker-client access
 - Time of day/night
 - Form of access, e.g., text message, email
- Relationships with former clients
- Conflicts of interest, e.g., commercially sponsored video conferencing software with ads

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Electronic Services: Practitioner Competence

- Training (screening potential clients, assessment, interventions, encryption, documentation, termination of services)
- License (jurisdictional issues)
- Consultation and supervision
- Keeping up with research developments and evolving practice standards

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Electronic Services: Records and Documentation

- Encryption
- Access
- What and how to document (email, text, cybertherapy communications)
- Retention
- Disposal and destruction
- Relevant laws and regulations

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Electronic Services: Collegial Relationships

- Treating with respect
- Avoiding derogatory and defamatory postings
- Respecting colleagues' privacy (e.g., Google searches)
- Respecting colleagues' work products (plagiarism, unauthorized uploads)
- Responding to colleagues' unethical conduct (e.g., inappropriate postings, cyberbullying)
- Avoiding cyberbullying, collegial harassment

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Examples of Ethical Standards: Digital Services and Interventions

- <https://www.aswb.org/wp-content/uploads/2015/03/ASWB-Model-Regulatory-Standards-for-Technology-and-Social-Work-Practice.pdf>
- <http://www.apa.org/ethics/education/telephone-statement.aspx>
- <http://www.nbcc.org/assetmanagerfiles/ethics/internetcounseling.pdf>
- <https://ismho.org/suggestions.asp>

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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](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:

- Frederic G. Reamer, *Risk Management in Social Work: Preventing Professional Malpractice, Liability, and Disciplinary Action*. New York: Columbia University Press, 2015.
- Frederic G. Reamer, *The Social Work Ethics Casebook: Cases and Commentary*. Washington, DC: NASW Press, 2009.
- Frederic G. Reamer, *Ethical Standards in Social Work*, 2nd ed. Washington, DC: NASW Press, 2006.
- Frederic G. Reamer, *Boundary Issues and Dual Relationships in the Human Services*. New York: Columbia University Press, 2012.
- Frederic G. Reamer, *Social Work Values and Ethics*, 4th ed. New York: Columbia University Press, 2013.
- Frederic G. Reamer, *The Social Work Ethics Audit: A Risk-management Tool*. Washington, DC: NASW Press, 2001.