

ETHICS AND RISK MANAGEMENT IN SCHOOL SETTINGS

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Ethical Decision-Making

Consent and Privacy

Breaching Confidentiality

Technology/Telebehavioral Health

Diversity Considerations

OVERVIEW OF THE PRESENTATION

ETHICAL DECISION-MAKING

Morals

- Personal belief system
- Individual and cultural differences

Ethics

- Professional behavior and interactions
- Agreed-upon rules established by a profession
- Ideal standards

Law

- Minimum standards of behavior

Mandated reporting

Statewide bullying policy

42 CFR Part 2

HIPAA

FERPA

Abortion

RELEVANT LAWS

CONFLICTING PERSPECTIVES



**Legal:
Obligation to
Parents**

Children assert
legal rights
through their
parents/guardians

**Counselor:
Obligation to
Minor**

Code of Ethics
provides little
guidance to
resolve this
conflict

HOW TO RECOGNIZE LEGAL ISSUES?

Do any of these apply?

- Legal proceedings have been initiated?
- Lawyers are on the scene?
- You are vulnerable to having a complaint filed against you for misconduct?

Clarify your role with your client and refer the client to attorneys for legal advice

Seek legal help

Focus on the actor – “Who should I be?”

Integrity (do what is right because you believe it is right)

Discernment (perceive ethically relevant aspects of the situation)

Acceptance of emotion (emotion informs reason, e.g., compassion)

Self-awareness

Interdependence with the community (awareness of context)

VIRTUE ETHICS

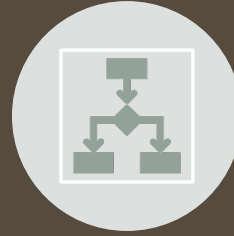
ETHICAL DECISION MAKING



IDENTIFY AND DEFINE
THE PROBLEM (TAKE
TIME)



CONSIDER THE
PRINCIPLES AND
VIRTUES



TUNE IN TO YOUR
FEELINGS



CONSULT WITH YOUR
COLLEAGUES OR
EXPERTS



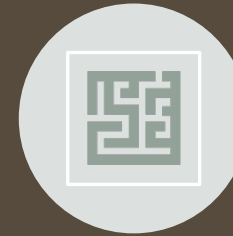
INVOLVE YOUR CLIENT
IN THE DECISION-
MAKING PROCESS



IDENTIFY DESIRED
OUTCOMES



CONSIDER POSSIBLE
ACTIONS



CHOOSE AND ACT
ON YOUR CHOICE

GUIDELINES



IDENTIFY THE
PROBLEM



APPLY LEGAL
STANDARDS AND
CODE OF ETHICS



DETERMINE THE
NATURE OF THE
DILEMMA



GENERATE POTENTIAL
COURSES OF ACTION



CONSIDER POTENTIAL
CONSEQUENCES OF
ACTION



EVALUATE THE
SELECTED COURSE OF
ACTION



IMPLEMENT THE
COURSE OF ACTION

Justice: “Would you treat others the same in this situation?”

Universality: “Would you be willing to recommend the course of action to other counselors?”

Publicity: “Would you be willing to have your actions come to light and be known by others?”

Moral Traces: “Lingering feelings of doubt, discomfort, or uncertainty after resolving the ethical dilemma”

FOUR SELF-TESTS

DID I DO THE RIGHT THING?

Maintained personal and professional honesty, coupled with

Promoted the client's best interest

Absence of malice or personal gain

Can justify their actions as the best judgment regarding what should be done based on the current state of the profession

CONSENT AND PRIVACY |

Privacy: Right of a person to decide what information about them will be shared with or withheld from others

Confidentiality (ethical): Counselor's responsibility to respect client's privacy and promise to clients that information revealed during counseling will be protected from disclosure without consent

Privileged Communication (legal): Protects clients from having confidential communications being disclosed in a court of law without permission

PRIVACY, CONFIDENTIALITY, AND PRIVILEGED COMMUNICATION



DO CHILDREN HAVE THE SAME RIGHT TO
CONFIDENTIALITY AS ADULT CLIENTS?

ETHICAL DILEMMAS?

- Should children be allowed to enter into counseling relationships without parental knowledge or consent?
- What should you do if a parent demands confidential counseling information?
- Release of records?
- At what age can a minor consent to treatment?
- To what degree should minors be allowed to participate in setting the goals of therapy and in providing consent to undergo it?
- What are the limits of confidentiality in counseling minors?
- Would you discuss these limits with minor clients even though a parent or guardian consents to treatment of the minor?
- What does informed consent consist of in working with minors?

THINGS TO CONSIDER

- What is the competence level of the minor?
- What are the potential risks and consequences if treatment is denied?
- What are the chances that the minor will not seek help or will not be able to secure parental permission for needed help?
- How serious is the problem?
- What are the laws pertaining to providing therapy for minors without parental consent?

Younger children often do not have an understanding of confidentiality or privacy, a socially learned concept

Preadolescents and adolescents may have heightened desire of privacy

Some children may not be concerned about their privacy

Children sometimes tell an adult about their concerns hoping that the adult will act as intermediary in telling their parents/guardians

Due to limitations in reasoning capacity, children may not be able to make decisions in their own best interest

FACTS ABOUT CHILDREN AND PRIVACY

RIGHTS OF MINORS

- Children assert any legal rights through their parents
- Children are not able to enter into any contracts
- Privacy rights of children belong to their parents/guardians
- Research: Teenage girls did not treat lightly their decision to abort and their decision to not involve their parents
- Emancipated Minors
- Involve children in treatment decisions

RIGHTS OF PARENTS

Best to respect parents' rights
and responsibilities for their
children

Decision to withhold information
can make us responsible for harm
by that information

Establish a thorough
understanding at the outset of
the treatment relationship

A sixteen year-old male with whom you have been working for six months tells you that the gang he used to belong to is threatening him. It took a great deal of outreach and creative energy to engage this child in services and he finally is at the point where he has trust in you. He doesn't want you to tell his parents or anyone else, as he wants to handle things himself. What do you do? What are some considerations related to confidentiality?

SCENARIO

RESPONDING TO PARENTS DEMANDING CONFIDENTIAL INFORMATION

Discuss the inquiry
with the minor

Try to persuade the
adult that the child's
best interests are
not served by
revealing the
information

Schedule a joint
session and act as
the mediator

Inform the child
ahead of time and
then disclose the
content of the
session to the adult
or refuse to disclose
information*

*seek
administrative
approval and
consider that
the adult may
have legal
right to the
information

- Avoid becoming embroiled in custody battles
 - Must maintain working relationship with both parents
 - Limited knowledge of home or marriage
 - Conflict of interest
- Might be in the child's best interest to include the noncustodial parent
- Seek and follow legal advice if unsure (e.g., state law)

RIGHTS OF NONCUSTODIAL PARENTS

SCENARIO

Bill is a middle school counselor. A child he counsels has told him that his father drinks heavily and seldom works. He says his mother works all the time and does her best to care for him and his siblings. The mother asks Bill if he would be willing to testify in court that she is a better parent so that she can get custody of her children. Bill appropriately declines, saying that his role is to counsel children, not to evaluate which parent is better. Despite Bill's response, he receives a subpoena and his principal, after checking with the school prosecuting attorney for the board, tells Bill he must go to court and answer any factual questions asked. After he is sworn in as a witness, Bill is asked to give information regarding his interactions with the child. He then is asked by the mother's attorney his opinion of the mother's parenting skills and whether he believes the child would be better off in the custody of his mother.

BREACHING CONFIDENTIALITY

Common issues: impending suicide pact, violent retaliation for victimization, use of crack cocaine, sexual intercourse with multiple partners when HIV positive, armed robbery, signs of serious depression

Age of the child is a significant variable

Only suicidal behavior is perceived unanimously as posing an immediate threat

RESEARCH ON BREACHING CONFIDENTIALITY

Responsibility as consultants to educators? (“clash of cultures”)

Reporting suspected child abuse or neglect

Reporting past abuse?

Reporting non-suicidal self-injury?

- Proactively inform about confidentiality and its limits

- Important to maintain counseling relationship with the child

- Involve the child in the process

CONFIDENTIALITY

A minor client tells
you that she is
pregnant

SCENARIO

GUIDANCE

- Age of consent?
- School policies?
- Confirmed pregnancy?
- Consensual sex? Age difference of both parties? Mandatory reporting?
- Student's relationship with parents/guardians?
- State requires consent for abortion? (in RI, one parent. Can obtain judicial bypass)
- Waiting period for an abortion?

SCENARIO

Leanne is 16 years old. During a counseling session, she tells you that her father sexually abused her from the time she was 8 until she was 12. She currently lives with her father and stepmother. What considerations must be made in reporting the abuse?



TECHNOLOGY

TELEBEHAVIORAL HEALTH — LEGAL AND REGULATORY ISSUES



All existing legal and ethical rules issues apply



HIPAA, HITECH, and state laws

We are the covered entity

- For engaging in “electronic covered transactions”
- For filing electronic insurance claims

WAY TO MANAGE RISK

- Minimize use of equipment
- Don't use public networks
- Avoid very easy ways to use technology
- Only use vendors with a "Business Associate Agreements" (BAAs)
 - Business associates are directly liable for compliance with HIPAA Privacy and Security rules
 - Mentions these vendors in informed consent
 - Get paid version of email software, cloud storage, etc.

Laws, regulations, rules contradict across/within states, provinces, and international borders

Laws cannot be proposed, enacted, and enforced as quickly as technology is evolving

Regulatory boards don't have to collaborate with other state/provincial regulators

Turf wars exist between states (e.g., different training requirements, different enforcement costs, etc.

PRACTICING OVER STATE LINES

WAYS TO MANAGE RISK

- Only provide services where licensed
- Require client/patient to attest to their location on every call
- Explain in informed consent: state(s) of licensure, payment policy, protocol to “attest” to location
- Review licensing rules and regulations for states in which you practice
- Get your board’s response in writing
- Understand and comply with state, provincial, and federal laws (related to informed consent, documentation, training, mandated reporting, etc.)
 - Duty to Warn Differences <https://www.ncsl.org/RESEARCH/HEALTH/MENTAL-HEALTH-PROFESSIONALS-DUTY-TO-WARN.ASPX>
 - Write to your malpractice insurance carrier about your telehealth coverage

You have been working with Michelle, a 15-year old client presenting with substance dependence issues, for the past several months. Michelle reported that her last substance use was approximately 5 months ago, and denies more recent use. As you are using a social networking site, you see a picture of Michelle and decide to open her profile. Michelle has posted recent pictures of herself with drug paraphernalia on her social media profile. You are concerned about her recovery and whether or not you should report this to. What should you do?

SCENARIO

CLIENT USE OF TECHNOLOGY

- Social Media – “Technology-based forms of communication of ideas, beliefs, personal histories, etc.”
- Six Types:
 - Social Networks (E.g., Facebook, LinkedIn)
 - Bookmarking Sites: Save, organize and manage resources on the internet
 - Social News: Post various news items or links to articles and then vote
 - Media Sharing: Upload and share media (e.g., YouTube)
 - Microblogging: Short updates are sent to subscribers (e.g., Twitter)
 - Forums: Post messages that are available to others

Counselors respect client's privacy on social media unless given consent to view such information

Would it be ok for a counselor to drive by a client's house?

PRESENTING PROBLEMS RELATED TO SOCIAL MEDIA

- FoMo
- Social Media Addiction
- Cyberbullying
- Sexting



COUNSELOR USE OF TECHNOLOGY

- Using the Internet to Educate Clients
 - Precautions
 - 58% of American adults with first consult online resources when seeking solutions to problems
- Communicating with Clients: Text Messages, Emails,
 - Use current encryption standards
 - Inform about inherent limits of confidentiality
 - Liability issue associated with emergency messages
 - Verify client's identity at the beginning and throughout the process

E-MAIL



Can be intercepted or read by others



Record exists for every message



Consider that the message could become public

01

Separate personal
and professional
web pages and
profiles

02

Ensure information
is accurate

03

List all professional
licensed and
certifications and
provide the links

04

Do not accept
clients as *friends*

05

Do not accept
current or former
friends as clients

06

Do not solicit
testimonials

07

Avoid disclosing
confidential client
information

SOCIAL MEDIA USE BY COUNSELORS

SOCIAL MEDIA USE BY COUNSELORS

- Before posting ask yourself:
 - What are the costs and benefits of posting the information?
 - Is there a high probability that clients will be significant and negatively affected?
 - How will the disclosure affect my relationship with my clients?
 - Does the disclosure threaten my credibility or undermine the public's trust in the field of mental health?



DIVERSITY CONSIDERATIONS

DIVERSITY CONSIDERATIONS

Responsibility to have a
thorough understanding
of diversity considerations

Responsibility as
advocates for children

Tonya has begun counseling the Hernandez family. The parents, Guillermo and Annabella, emigrated from Guatemala 6 years ago. They are experiencing some family conflict in their relationships with their three children: two teenage girls and a 7-year-old boy. Today, as Tonya is walking down the hallway to the reception area to greet the Hernandez's, she sees Guillermo grab the young boy roughly by the arm slap him across the face. She is alarmed to see this abusive behavior and thinks she may have to report it to Child Protective Services.

SCENARIO

RESOURCES

- RI State Statutes: <http://www.rilin.state.ri.us/statutes/>
- Judicial Bypass: <http://advocatesforyouth.org/publications/publications-a-z/2508-judicial-bypass-procedures>
- Statutory Rape: <https://www.cga.ct.gov/2003/olrdata/jud/rpt/2003-R-0376.htm>
- 42 CFR: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title42/42tab_02.tpl
- Mandated Reporting: www.childwelfare.gov

QUESTIONS? COMMENTS?

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