

**Pamela H. Harmell, Ph.D.**  
**Psychotherapy in the Age of Technology**

Pamela H. Harmell, Ph.D.

Legal and Ethical Considerations

Psychotherapy in the Age of Technology

Section A

Introduction to Ethics

A-1


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A-2

## Law and Ethics

- *CE – refresher of what you already know*
- *Competence – Learning new skills*
  
- *Hopefully this workshop has both*
- *My perspective...*
- *The “law of no surprises”*
- *Bibliography at end of each section*
- *Slide numbers won’t match yours*
- *You have some slides I will not be discussing due to time constraints but I wanted you to have the information*

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A-3

## Section A

- *Introduction to Ethics and Law*
- *The Four Bins Method*
- *Four Regulatory Mechanisms*
- *Sum Up Questions*

3



4

## Violators...

**Two Types of Violators:**

- *“Naïve”*
  - *“Avon calling...”*
- *Predator*
  - *Polaroids...*

4

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## Four Considerations

Behnke, 2014

### The Four Bins Method

#### 1. Legal

- Which jurisdiction dictates
- State, federal, regulatory

#### 2. Clinical

- Patient welfare
- Proper treatment

#### 3. Ethical

- Standard of care
- What is best action to take

#### 4. Risk Management

- Liability
- Decision making model

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A-6

### PRACTICE VIGNETTE - STARBUCKS

*You go to your favorite Starbucks for your morning latte. Your eyes are barely open. You stand on line. When you get to the front of the line, you discover your patient James, a 22 year old male student, is the new barista who is taking your order.*

*You are stunned because you have never seen James here before. You quietly give him your order for a small latte. James gives you a “wink” saying okay... but actually gives you the largest size latte while only charging you for the smallest size.*

What do you do? →

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A-7

## Starbuck's Vignette

### Considerations

- *Tell the barista you will discuss this at the next session?*
- *Put a large tip in the tip jar?*
- *Refuse to accept the "gift?"*
- *None of the above?*

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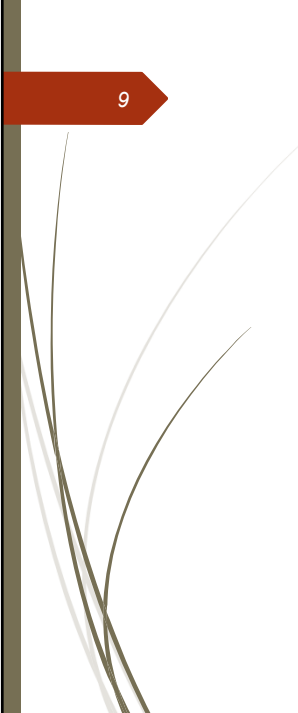
## Four Considerations

### Starbucks - Four Sorting "Bins"

#### **1. Legal**

- *Could it be a licensing or ethics complaint?*
- *Are you a "thief" if you accept the larger latte?*
- *Are you collaborating with your client in thievery?*

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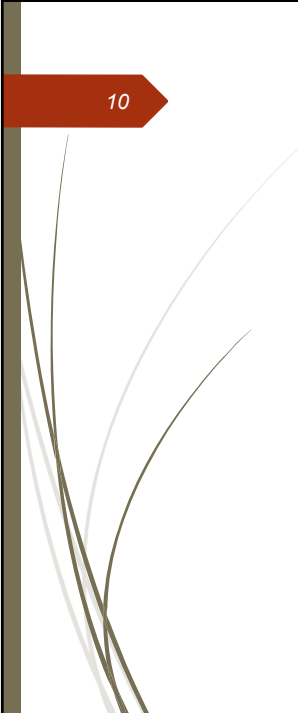
Four Considerations

**Starbucks - Four Sorting “Bins”**

**2. Clinical**

- *Protecting patient welfare*
- *Demeaning patient by rejecting larger latte*
- *Effect on relationship*

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Four Considerations

**Starbucks - Four Sorting “Bins”**

**3. Ethical**

- *Breach of confidentiality in public setting*
- *Conflict of interest for psychotherapist*
- *Counter-transference*
- *Open to public scrutiny*
  - *Ethics committee*
  - *Court*
  - *Licensing boards*
  - *Other colleagues*
  - *Peer review*

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## Four Considerations

**Starbucks - Four Sorting “Bins”**

### **4. Risk Management**

- *What is the liability for accepting the “illegal” latte?*
- *Consult with malpractice RISK MANAGEMENT insurance company*
- *Consult with ethics expert*

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A-12

## Introductory Legal and Ethical Questions

**1. What is the concept of the “Rule of Least Restrictive Treatment” according to the Federal Supreme Court O’Connor vs Donaldson Decision?**

**ANSWER:**

*According the O’Connor vs Donaldson Decision, psychotherapists are required to use the least restrictive methods of treatment in order to maintain and respect the client’s civil rights. **MORE LATER***

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A-13

## Introductory Legal and Ethical Questions

2. *What is the history of the term "Basket Case?"*



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A-14

## Definitions: Basket Case

### **More Formal Term Historically:**

*The term originated from WWI, indicating a soldier missing both his arms and legs, who needed to be literally carried around in a "basket." Today it indicates a state of helplessness similar to the metaphoric removal of the appendages most frequently in the context of mental health or aptitude*

### **Colloquial – Everyday Usage:**

*Institutionalized person in mental hospital who has nothing to do so he or she is given material to construct baskets as craftwork.*

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Introductory Legal and Ethical Questions

**3.** *Your new patient requests that you accept payment with a credit card in the name of her significant other. When you inquire if the card holder is aware the therapy fees will be charged to the card, the patient explains that the significant other is “wealthy, and will not notice the charges on the card...” and admits she does not want the card holder to know about the therapy.*

► *Are you able to do this?* →

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A-16

Concerns for Question 6

**Considerations**

- *Fraudulent billing*
- *Confidentiality*
- *Get consent to use of card from card holder*
- *Refuse to treat the patient without consent*
- *Fee for service from actual patient*

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Introductory Legal and Ethical Questions

**4.** *You gain consent from the card holder to use the credit card for payment of sessions. However, the credit card company charges 3% processing charge. Can you pass this charge along to the patient or card holder?*

**ANSWER:**

*It is against federal statutes to charge the patient a processing fee. However, you may arrange fees to give an incentive for cash payment.*

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A-18

Credit Card Surcharge

- **ILLEGAL** to charge the client an extra 3% credit card surcharge
- **LEGAL** to provide an incentive such as a 3% discount for paying cash
- See website below:

<https://www.cardfellow.com/charging-customers-a-credit-card-convenience-fee-at-check-out/#chargeCustomers>

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A-19

## Real Life Situation – Jury Duty

*During a therapy session, Dr. Harmell was told by her patient of 5 years that he could not come to the next scheduled appointment because he had been assigned jury duty. When she casually inquired which day and what court his assignment was taking place, she quickly realized it was the same day and the same court to which her jury duty had been assigned.*

*What are the ethical issues?*

*What should she do?*

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A-20

## Jury Duty: What should she do?

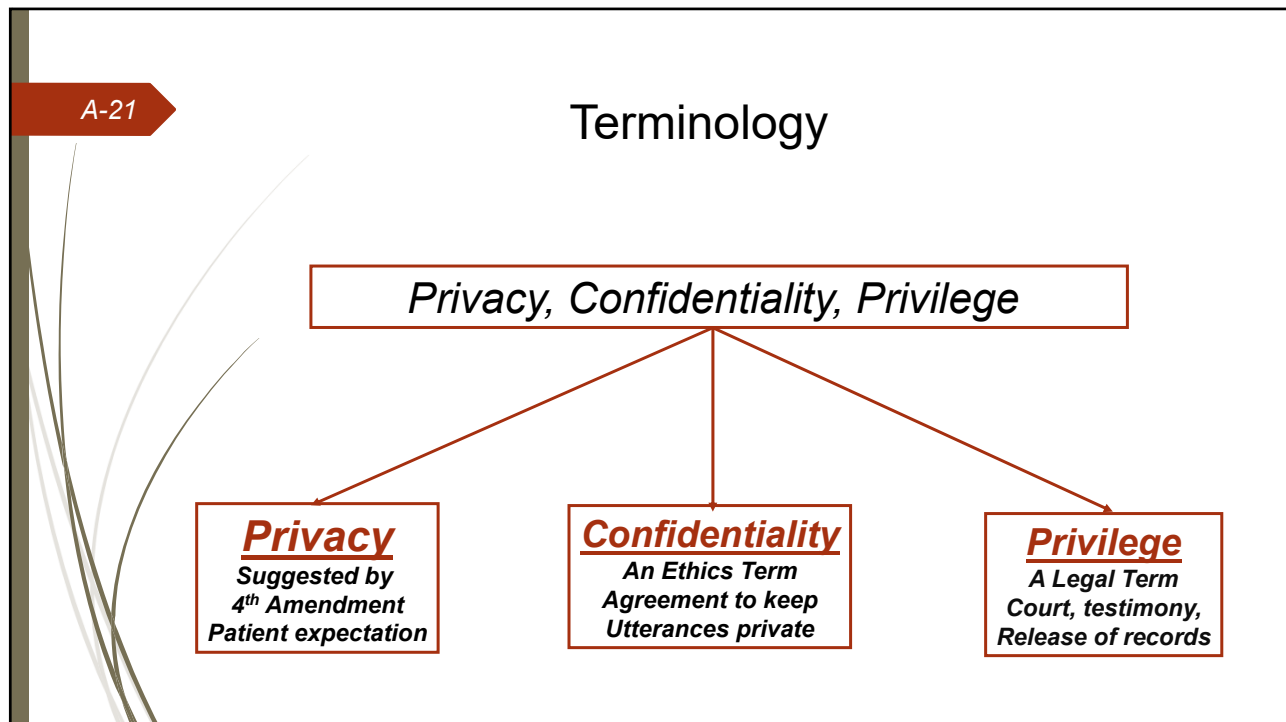
### **Issues:**

- Confidentiality
- Rupture to therapeutic relationship
- Multiple relationship

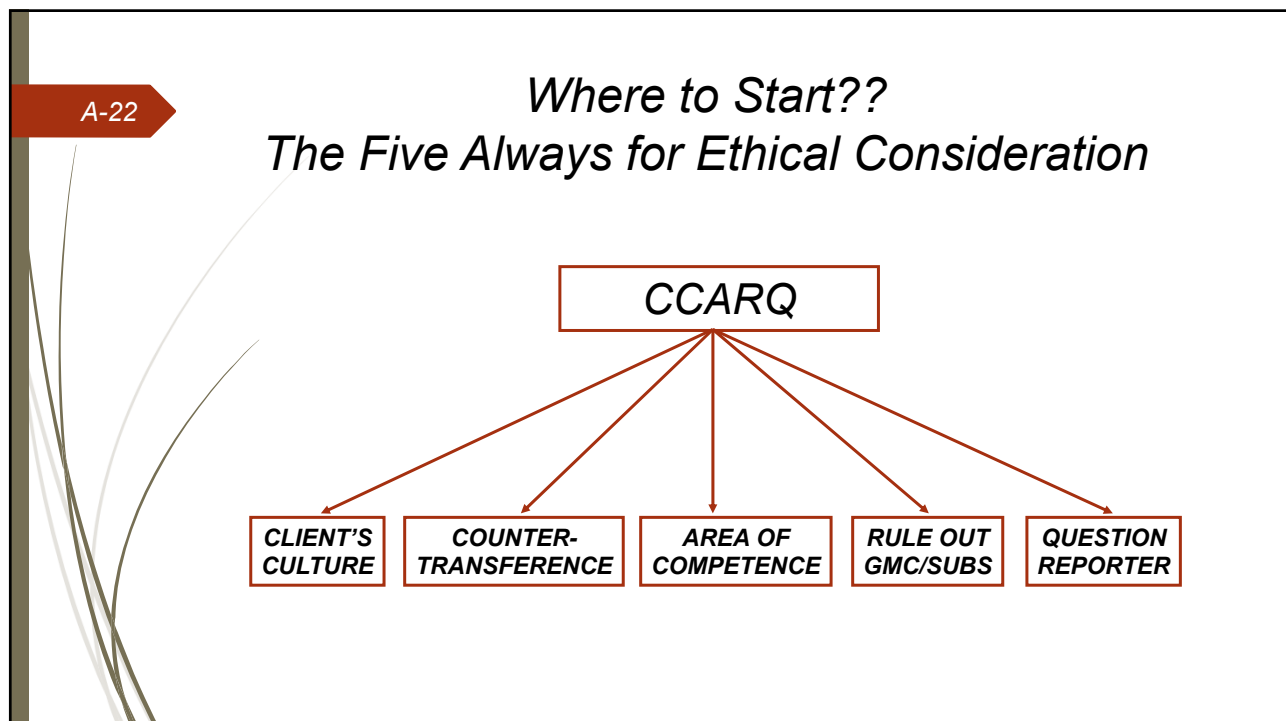
### **Possibilities:**

- Inform client in advance
- In camera session with judge
- Consult, consult, consult

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## Four Regulatory Bodies

### 1. *FOCUS - Licensing Boards*

➤ *BOP; BBS*

### 2. *Ethics Committees*

➤ *APA / CPA*

➤ *CAMFT; NASW; ACA*

### 3. *Civil Suits of Malpractice*

- *Patient sues therapist*

### 4. *Criminal Allegations*

- *AG takes action against licensee*

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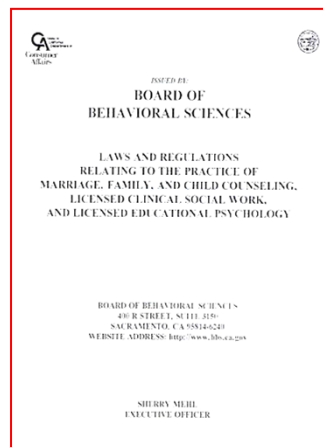
A-24

## Licensing Boards Example: California

BBS

BOP

*MFTs  
LPCCs  
MSWs*



*Psychologists*

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A-25

## Four Regulatory Bodies

1. *Licensing Boards – see previous slides*
  - ▶ *Board of Psychology*
2. **FOCUS - Ethics Committees**
  - ▶ **APA / NASW / AAMFT / ACA / NAADAC**
3. *Civil Suits of Malpractice*
  - *Patient sues therapist*
4. *Criminal Allegations*
  - *AG takes action against licensee*

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A-26

## Ethics Codes and Behavior

### **Each Ethics Situation is Unique**

- ▶ *Ethics is a continuous, organic process*
- ▶ *Codes are not used “cookbook” style*
  - ▶ *Each situation is unique*
- ▶ *Codes are the standard of care of the profession*
- ▶ *Therapy is done by fallible beings*
- ▶ *Sometimes answers are elusive*

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**NAADAC: The Association for Addiction Professionals**  
**NCC AP: The National Certification Commission for Addiction Professionals**  
**CODE OF ETHICS: Approved 10.09.2016**

[www.naadac.org/code-of-ethics](http://www.naadac.org/code-of-ethics)

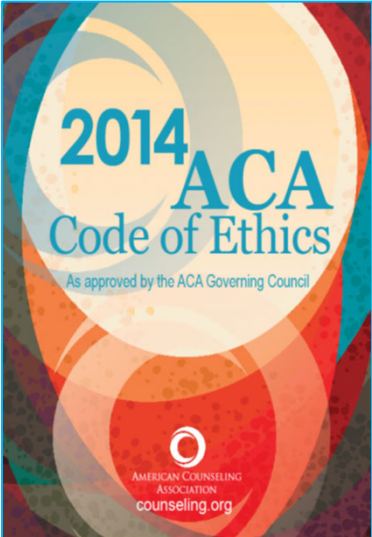
Mechanism #2

	INTRODUCTION TO NAADAC/NCC AP ETHICAL STANDARDS
1-1	NAADAC recognizes that its members, certified counselors, and other Service Providers live and work in many diverse communities. NAADAC has the responsibility to create a Code of Ethics that are relevant for ethical deliberation. The terms "Addiction Professionals" and "Providers" shall include and refer to NAADAC Members, certified or licensed counselors offering addiction-specific services, and other Service Provider along the continuum of care from prevention through recovery. "Client" shall include and refer to individuals, couples, partners, families, or groups depending on the setting.
1-2	The NAADAC Code of Ethics was written to govern the conduct of its members and it is the accepted Standard of Conduct for Addiction Professionals certified by the National Certification Commission. The Code of Ethics reflects the ideals of NAADAC and its members. When an ethics complaint is filed with NAADAC, it is evaluated by consulting the NAADAC Code of Ethics. The NAADAC Code of Ethics is designed as a statement of the values of the profession and as a guide for making clinical decisions. This Code is also utilized by state certification boards and educational institutions to evaluate the behavior of Addiction Professionals and to guide the certification process.
1-3	In addition to identifying specific ethical standards, NAADAC recommends consideration of the following when making ethical decisions: 1. Autonomy: To allow others the freedom to choose their own destiny 2. Obedience: The responsibility to observe and obey legal and ethical directives 3. Conscientious Refusal: The responsibility to refuse to carry out directives that are illegal and/or unethical 4. Beneficence: To help others 5. Gratitude: To pass along the good that we receive to others 6. Competence: To possess the necessary skills and knowledge to treat the clientele in a chosen discipline and to remain current with treatment modalities, theories and techniques 7. Justice: Fair and equal treatment, to treat others in a just manner 8. Stewardship: To use available resources in a judicious and conscientious manner, to give back 9. Honesty and Candor: Tell the truth in all dealing with clients, colleagues, business associates and the community 10. Fidelity: To be true to your word, keeping promises and commitments 11. Loyalty: The responsibility to not abandon those with whom you work 12. Diligence: To work hard in the chosen profession, to be mindful, careful and thorough in the services delivered 13. Discretion: Use of good judgment, honoring confidentiality and the privacy of others 14. Self-improvement: To work on professional and personal growth to be the best you can be 15. Non-maleficence: Do no harm to the interests of the client 16. Restitution: When necessary, make amends to those who have been harmed or injured 17. Self-interest: To protect yourself and your personal interests.

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Mechanism #2 ~ Ethics Codes ~ LPCCs  
ACA.ORG



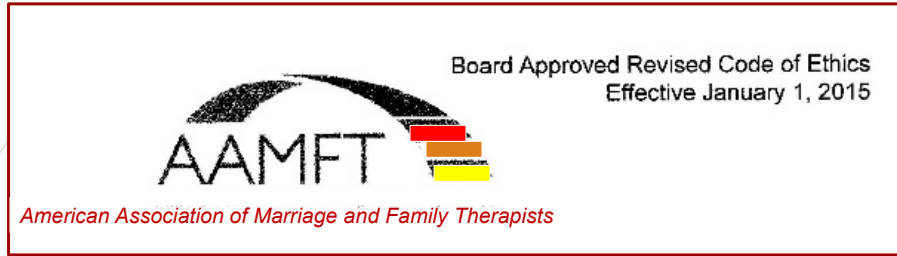
The image shows the cover of the 2014 ACA Code of Ethics. It features a colorful, abstract design with overlapping circles in shades of blue, orange, and red. The text '2014 ACA Code of Ethics' is prominently displayed in the center. Below it, it says 'As approved by the ACA Governing Council'. At the bottom, the American Counseling Association logo and website 'counseling.org' are visible.

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## Mechanism #2 ~ AAMFT of Ethics, 2015



### AAMFT Ethics Committee

#### Commitment to Service, Advocacy and Public Participation

Marriage and family therapists are defined by an enduring dedication to professional and ethical excellence, as well as the commitment to service, advocacy, and public participation. The areas of service, advocacy, and public participation are recognized as responsibilities to the profession equal in importance to all other aspects. Marriage and family therapists embody these aspirations by participating in activities that contribute to a better community and society, including devoting a portion of their professional activity to services for which there is little or no financial return. Additionally, marriage and family therapists are concerned with developing laws and regulations pertaining to marriage and family therapy that serve the public interest, and with altering such laws and regulations that are not in the public interest. Marriage and family therapists also encourage public participation in the design and delivery of professional services and in the regulation of practitioners. Professional competence in these areas is essential to the

#### Ethical Decision-Making

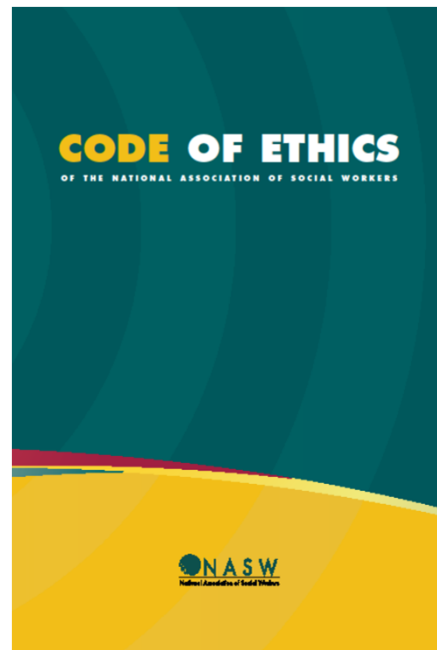
Both law and ethics govern the practice of marriage and family therapy. When making decisions regarding professional behavior, marriage and family therapists must consider the AAMFT Code of Ethics and applicable laws and regulations. If the AAMFT Code of Ethics prescribes a standard higher than that required by law, marriage and family therapists must meet the higher standard of the AAMFT Code of Ethics. Marriage and family therapists comply with the mandates of law, but make known their commitment to the AAMFT Code of Ethics and take steps to resolve the conflict in a responsible manner. The AAMFT supports legal mandates for reporting of alleged unethical conduct.

Marriage and family therapists remain accountable to the AAMFT Code of Ethics when acting as members or employees of organizations. If the mandates of an organization with which a marriage and family therapist is affiliated, through employment, contract or otherwise, conflict with the AAMFT Code of Ethics, marriage and family therapists make known to the organization their commitment to the

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A-30

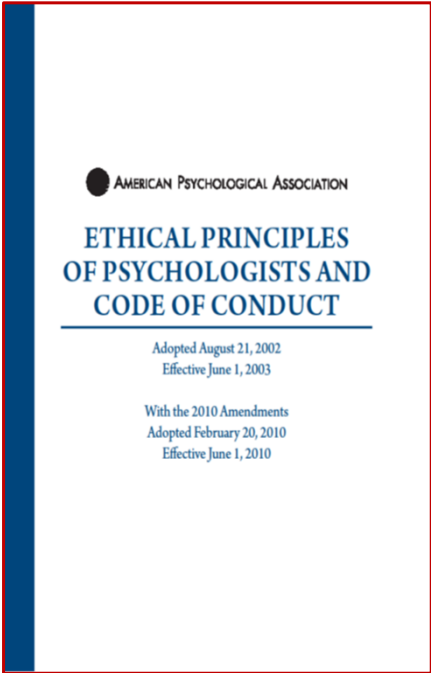
## Mechanism #2 ~ NASW [www.socialworkers.org](http://www.socialworkers.org) 2018



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A-31 Mechanism #2 ~ APA  
[www.apa.org](http://www.apa.org)  
2017



The image shows the cover of the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct. The cover is white with a blue vertical bar on the left side. The text on the cover includes: "AMERICAN PSYCHOLOGICAL ASSOCIATION", "ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT", "Adopted August 21, 2002 Effective June 1, 2003", and "With the 2010 Amendments Adopted February 20, 2010 Effective June 1, 2010".

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A-32

Mechanism #2  
Ethical Guidelines  
National Latina/o Psychological Association  
January 1 2018

[Ethical Guidelines NLPA Adopted Jan 1st.pdf](#)

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Ethical Standards of Association of Black Psychologists  
<https://www.abpsi.org/LCPP.html>

*PREAMBLE*

*We hold to be true that persons certified in African Centered/Black Psychology are completely committed to no less than the absolute liberation of the Black mind shall be recognized as proficient or competent in African Centered/Black Psychology. We also hold to be true that the commitment process simultaneously recognizes:*

*I. Responsibility*

*II. Restraint*

*III. Respect*

*IV. Reciprocity*

*V. Commitment*

*VI. Cooperativeness*

*VII. Courage*

*VIII. Accountability*

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Ethical Practice Vignette

**Ethics Practice Vignette - James and Dr. Error**

*James, an Intern, Marriage and Family therapy, is under supervision with Dr. Error at the agency. James is certain he has a reportable child abuse situation. When he consults with his supervisor at the agency, Dr. Error forbids James to report the child abuse. It seems the father of the potentially abused child is a personal friend of Dr. Error whom he referred to the agency.*

B-34

*What are the ethical and legal concerns?*

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B-35

### Ethical Practice Vignette

#### **Ethical Issues - James and Dr. Error**

1. *Supervising an intern who is treating her friend*
2. *Prevention of child abuse report*
  - *Illegal and unethical*

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### Four Regulatory Bodies

1. *Licensing Boards – previous slides*
  - ▶ *Board of Psychology*
2. *Ethics Committees - previous slides*
  - ▶ *APA / CPA*
3. ***FOCUS - Civil Suits of Malpractice***
  - ***Patient sues therapist***
4. *Criminal Allegations*
  - *AG takes action against licensee*

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A-37

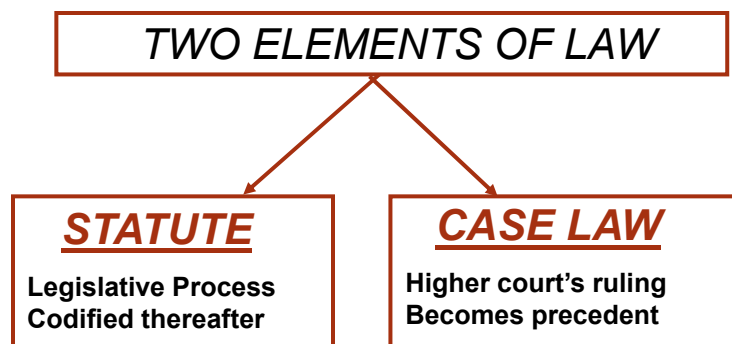
## Four Types of Laws

1. *The U.S. Constitution – Federal*
  - Almost always overrides state laws
2. *Statutes - Written by legislature*
  - State and Federal Statutes
3. **Regulations - Written by licensing boards**
4. *Case Law - Appellate decisions*
  - California: Ct. of Appeals; Supreme Ct.

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A-38

Question:  
Do Courts Make Law?



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Definition of Malpractice  
<http://www.abpla.org/>

*“**Malpractice** occurs when a health care professional, through a negligent act or omission, causes an injury to a patient.”*

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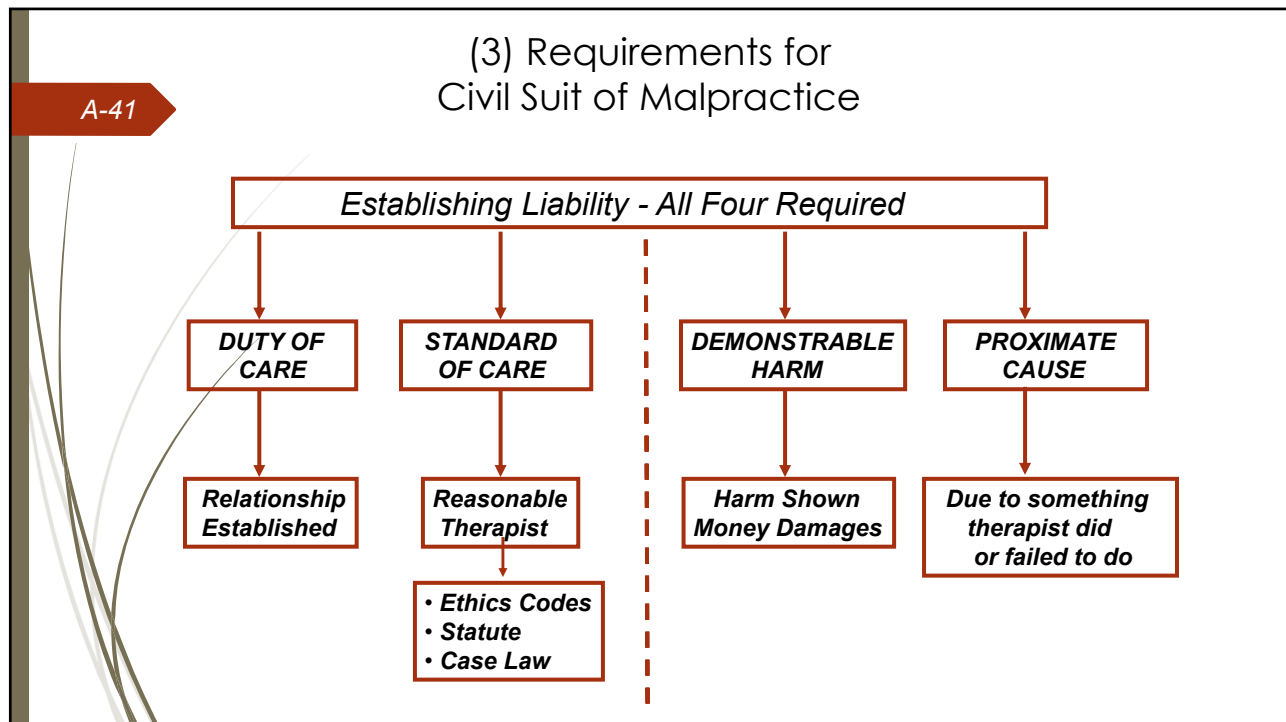
A-40

Definition of Civil Suit  
<http://www.abpla.org/>

*“A **civil lawsuit** is the court-based process through which a person can hold another person liable for wrongdoing. If successful, the person is awarded compensation (money) for the harm caused.”*

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- A-42
- ### Four Regulatory Bodies
1. *Licensing Boards – previous slides*
    - *Board of Psychology*
  2. *Ethics Committees – previous slides*
    - *APA / CPA*
  3. *Civil Suits of Malpractice – previous slides*
    - *Patient sues therapist*
  4. **FOCUS - Criminal Allegations**
    - **AG takes action against licensee**

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Definition of Criminal Conduct  
<http://www.abpla.org/>

**Criminal Conduct** is “a body of rules and statutes that defines conduct prohibited by the government because it threatens and harms public safety and welfare.”



A-43

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## Standard of Proof

### **“Proof Hurdles”**

#### **Civil Process – 51% Standard**

- ▶ “Preponderance of the evidence”
- ▶ Money damages

#### **Criminal Process – 99% Standard**

- ▶ “Beyond a reasonable doubt”
- ▶ Incarceration
- ▶ Mainly violation of statutes

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A-45

## Standard of Proof

Wiki: Legal Burden of Proof

### **“Proof Hurdles”**

- *Middle Proof – 75% Standard*
- *Clear and convincing*

*Clear and convincing proof means that the evidence presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact (judge or jury) must have a firm belief or conviction in its factuality.*

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B-46

## Four Regulatory Bodies (4) Criminal Allegations

- *Attorney General Action*
- *Licensee gets investigated*
- *Generally violation is egregious*
  - *Sex with patient*
  - *Insurance fraud*

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A Bad Day for Our Profession... (captioned)



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A-48

Sum Up Question

*Name the FOUR elements holding us accountable for our actions as therapists.*

**ANSWER:**

1. *Ethics Codes and Committees*
2. *Licensing Boards*
3. *Civil Suit of Malpractice*
4. *Criminal Allegations*

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A-49

## Sum Up Question

*Name the FOUR elements of a Civil Suit for Malpractice.*

**ANSWER:**

1. *Duty of Care*
2. *Standard of Care*
3. *Demonstrable Harm*
4. *Proximate Cause*

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A-50

## Sum Up Question

*Name two consequences of long term hospitalization known as “institutionalization”*

**ANSWER:**

- ▀ *Problems associated with hospitalization*
- ▀ *Decreased self-esteem*
- ▀ *Decreased self-worth*
- ▀ *Decreased ability to cope and functioning*

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A-51

## Sum Up Question

*Name the “four bins” discussed by Behnke with regard to patient dilemmas.*

**ANSWER:**

- ▀ *Legal*
- ▀ *Ethical*
- ▀ *Clinical*
- ▀ *Risk Management*

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A-52

## Sum Up Question

*What is the difference between “statute” and “case law?”*

**ANSWER:**

**STATUTE**

Legislative Process  
Codified thereafter

**CASE LAW**

Higher court’s ruling  
Becomes precedent

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Bibliography

Corey, G., Gorey, M., & Callanan, P. (2015). *Issues and Ethics in the Helping Professions (9<sup>th</sup> Ed.)*. Belmont, CA: Brooks/Cole.

Dallesasse, S. (2010). *Managing non-sexual multiple relationships in university counseling centers: Recommendations for graduate students and practicum students*. *Ethics and Behavior*, *20*(6), 419-428.

Gallardo, M. E. (2006). *Self-disclosure in a multicultural context*. *Encyclopedia of multicultural psychology*. Thousand Oaks, CA: Sage

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Bibliography

Gallardo, M. (2012). *Context and Culture: The Initial Clinical Interview with the Latina/o Client*, *Journal of Contemporary Psychotherapy* DOI 10.1007/s10879-012-9222-8

Garfinkel, P., Dorian, B., Sadavoy, J., & Bagby, R. (1997). *Boundary violations and departments of psychiatry*. *Can J of Psychiatry*, *51*, 357-375.

Gutheil, T, & Gabbard, G. (1998). *Misuses and misunderstandings of boundary theory in clinical and regulatory settings*. *Am J of Psychiatry*, *155*, 409-414.

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Bibliography

Gutheil T, Brodsky A. *Preventing Boundary Violations in Clinical Practice*. New York: Guilford Press; 2008

Gutheil, T. (2010). *Ethical aspects of therapist self-disclosure in psychotherapy*, 27, *Psychiatric Times*. Downloaded 8/11/18  
<http://www.psychiatrictimes.com/articles/ethical-aspects-self-disclosure-psychotherapy>

Harmell, P.H. (Sep-Oct, 1998). *Multiple multiple Relationships relationships*. *The Los Angeles Psychologist*.

Henretty JR, & Levitt HM. *The role of therapist self-disclosure in psychotherapy: a qualitative review*. *Clin Psychol Rev*. 2010;30:63-77.

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Bibliography

Kemp, D. (2007). *Mental Health in America*. Santa Barbara, CA: ABC-CLIO

Knapp, S. (2013). *Assessing and Managing Risk in Psychological Practice: An Individualized Approach* (2<sup>nd</sup> ed.). Rockville, MD: The Trust.

Koocher, G., & Keith-Spiegel, P. (2008). *Ethics in Psychology and the Mental Health Professions* (3<sup>rd</sup> Ed). NY:Oxford University Press.

Pope, K. & Vasquez, M. (2011). *Ethics in Psychotherapy and Counseling: A Practical Guide*, Fourth Edition. NJ: Wiley.

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Bibliography

Quattrocchi, M., & Schopp, R. (2005). *Tarasaurus Rex: A standard of care that could not adapt. Psychology, Public Policy and Law, 11(1), 109-137.*

Radden, J. (2001). *Boundary violation ethics: Some conceptualization clarifications. J of Am Acad of Psychiatry and Law, 29, 319-326.*

Speight, S. (2012). *An exploration of boundaries and solidarity in counseling relationships. The Counseling Psychologist, 40(1), 133-157.*

Welfel, E. (2016). *Ethics in counseling and psychotherapy. Belmont, CA: Brookes/Cole.*