

Pamela H. Harmell, Ph.D.

2022

Legal and Ethical Considerations

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Introduction to Law and Ethics

Handling Subpoenas and Court Orders

Multi-client Situations

The 21st Century CURES Act

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Subpoenas, Multi-clients and The 21st Century CURES Act

- *The Four Mechanisms Holding Therapists Accountable*
- *The Four Bins Ethical Decision-Making Model*
- *Subpoenas*
- *Court orders*
- *How to handle*
- *Multi-client situations*
 - *Group, family, couple*
 - *Keeping secrets*
 - *Record keeping*
 - *The 21st Century CURES Act*

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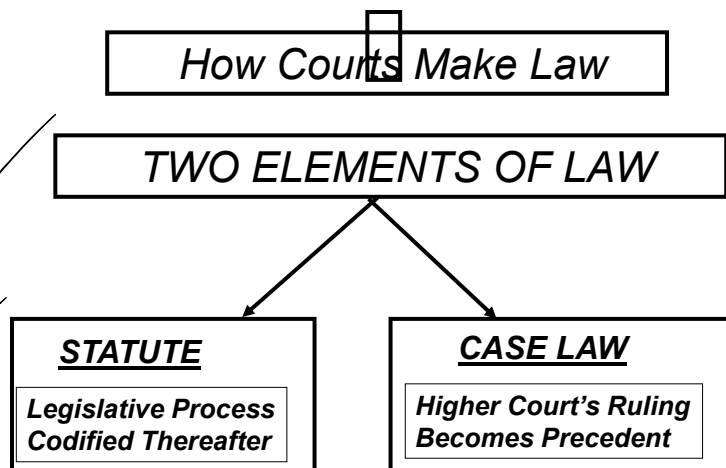
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Four Regulatory Bodies

1. *Licensing Boards*
 - *Board of Psychology*
2. *Ethics Committees*
 - *APA, ACA, NASW, AAMFT*
3. *Civil Suits of Malpractice*
 - *Patient sues therapist*
4. *Criminal Allegations*
 - *AG takes action against licensee*

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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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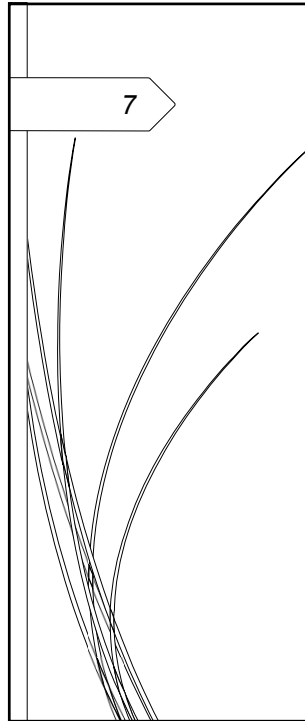
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Starbuck's Vignette

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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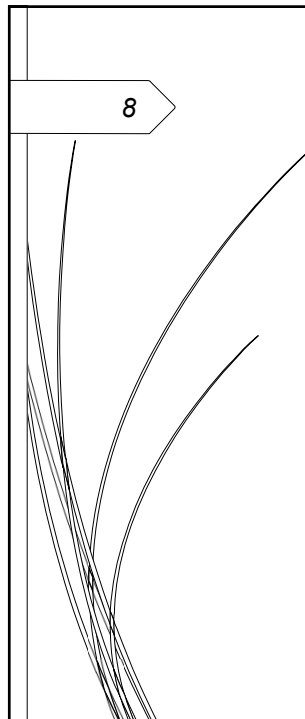
Four Considerations

Starbucks - Four Sorting “Bins”

1. Legal

- *Could it be a licensing or ethics complaint?*
 - *Unlikely unless it was pre-planned*
- *Are you a “thief” if you accept the larger latte?*
- *Are you collaborating with your client in thievery?*

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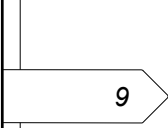
Four Considerations

Starbucks - Four Sorting “Bins”

2. Clinical

- *Protecting patient welfare*
- *Demeaning patient by rejecting larger latte?*
- *Effect on relationship*
 - *Should be discussed session*

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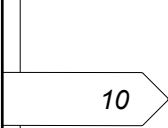
Four Considerations

Starbucks - Four Sorting “Bins”

3. Ethical

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

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Four Considerations

Starbucks - Four Sorting “Bins”

4. Risk Management

“Managing the risk of having a civil suit”

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

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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.

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Introductory Legal and Ethical Questions

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



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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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Concerns for Question 3

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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Credit Card Surcharge

- ILLEGAL to charge the client an extra 3% credit card surcharge however you can charge a fair fee that includes the credit card fee
- See website below:

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

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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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Jury Duty: What should she do?

Issues:

- *Confidentiality breach to judge*
- *Rupture to therapeutic relationship*
- *Multiple relationship*

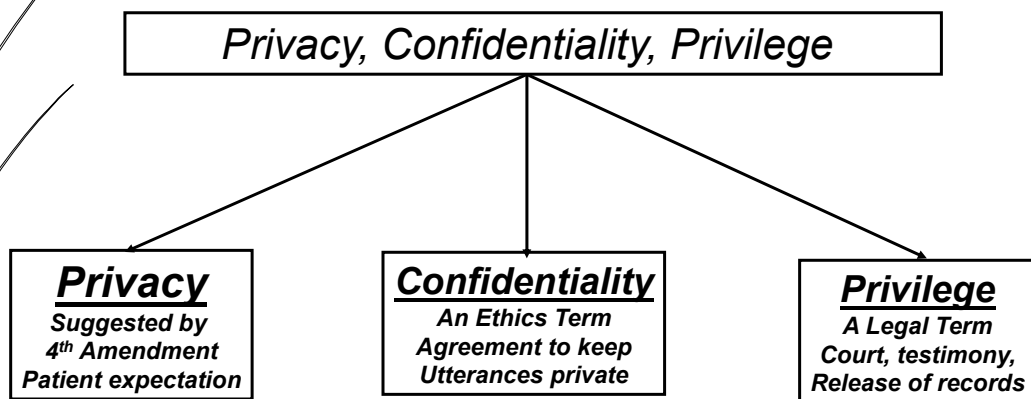
Possibilities:

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

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Terminology



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Definition of Standard of Care

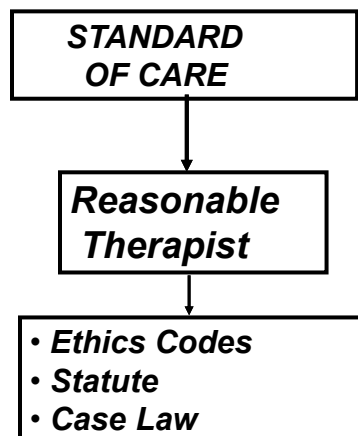
- *The “reasonable therapist” doctrine*
- *A diagnostic and treatment process that a clinician should follow for a certain type of patient, illness, or clinical circumstance. (New England Journal of Medicine, 2004)*
- *In legal terms, the level at which the average, prudent provider in a given community would practice. It is how similarly qualified practitioners would have managed the patient's care under the same or similar circumstances*

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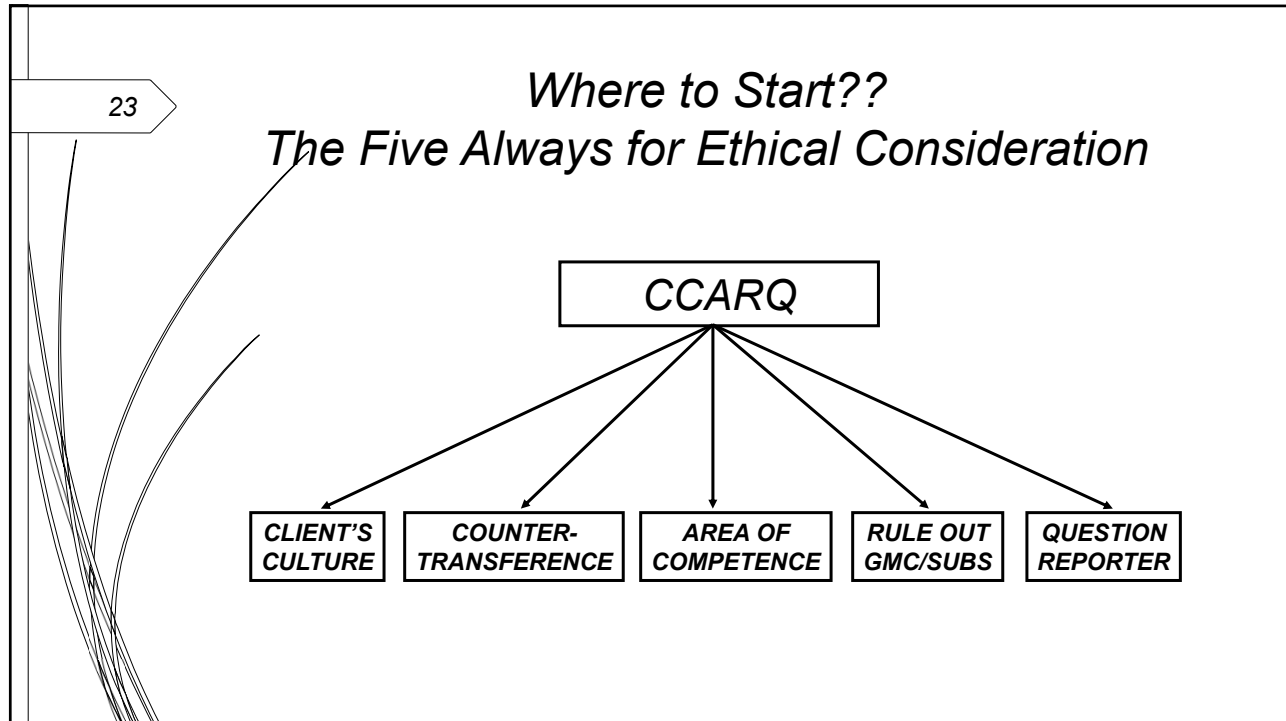
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Standard of Care

The “reasonable therapist” doctrine



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Practice Vignette

Your client calls you saying he is driving drunk with his two children in the back seat of his car.

What do you do?

USE CCARQ NOW....

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Using CCARQ

C – Culture

*There is not much to go on so you could use the last element “Q”
However it appears to be a **male** and a **father** which are cultural variants*

C – Counter transference

How do you feel about this? Angry, fearful, worried, child abuse report

A – Area of expertise

What do you know about reporting child abuse and working with addictions

R – R/O drugs and alcohol

This one is obvious

Q – Question the reporter

What did you find out in the intake about his drinking or parenting

What do you know about his impulsivity

NOTE: You must know the laws in your state regarding child abuse reporting

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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

Mechanism #2

- Principle IV: Working in a Culturally Diverse World
- Principle V: Assessment, Evaluation and Interpretation
- Principle VI: E-Therapy, E-Supervision and Social Media
- Principle VII: Supervision and Consultation
- Principle VIII: Resolving Ethical Concerns
- Principle IX: Publication and Communications

INTRODUCTION TO NAADAC/NCC AP ETHICAL STANDARDS

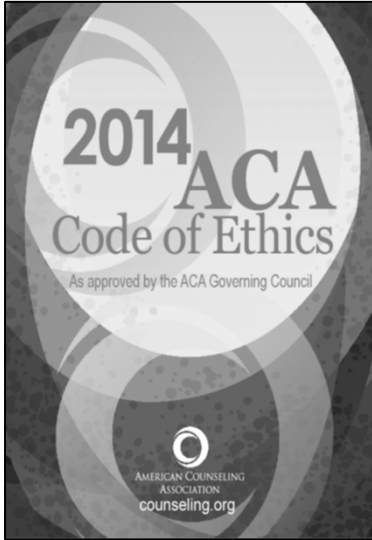
- 1-1 NAADAC recognizes that its members, certified counselors, and other Service Providers live and work in many diverse communities. NAADAC has the responsibility to create a Code of Ethics that are relevant for ethical deliberation. The terms “Addiction Professionals” and “Providers” shall include 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. **Benevolence:** 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 dealings 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




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Mechanism #2 ~ AAMFT of Ethics, 2015



Board Approved Revised Code of Ethics
Effective January 1, 2015

American Association of Marriage and Family Therapists

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.

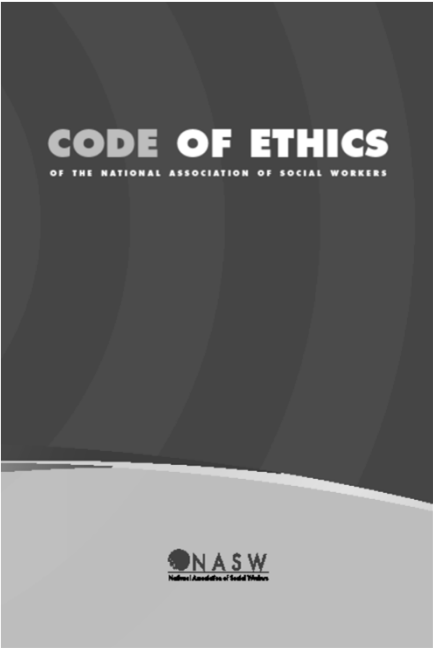
Marriage and family therapists remain accountable to the AAMFT Code of Ethics when acting as members or employees of organizations. If the mandates of an organization with which a marriage and family therapist is affiliated, through employment, contract or otherwise, conflict with the AAMFT Code of Ethics,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

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Mechanism #2 ~ NASW
www.socialworkers.org
2018

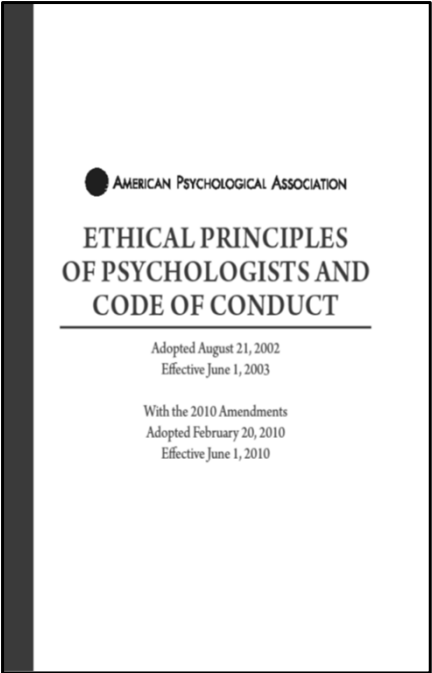


The image shows the cover of the NASW Code of Ethics. The title "CODE OF ETHICS" is prominently displayed in white capital letters against a dark background. Below it, in smaller white text, is "OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS". At the bottom, the NASW logo is visible, consisting of a circular emblem and the text "NASW National Association of Social Workers".

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Mechanism #2 ~ APA
www.apa.org
2017



The image shows the cover of the APA Ethical Principles of Psychologists and Code of Conduct. The title "ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT" is centered in a serif font. Above the title is the American Psychological Association logo, which includes a circular emblem and the text "AMERICAN PSYCHOLOGICAL ASSOCIATION". Below the title, the text "Adopted August 21, 2002" and "Effective June 1, 2003" is displayed. Further down, it states "With the 2010 Amendments", "Adopted February 20, 2010", and "Effective June 1, 2010".

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Ethical Guidelines
National Latina/o (AKA Latinx)
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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Sum Up Question

Name the Four Sorting Bins (L.C.E.R.) for Ethical Decision Making According to Behnke, 2014

ANSWER:

1. *Legal*
2. *Clinical*
3. *Ethical*
4. *Risk Management*

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Sum Up Question

Name the four mechanisms holding therapists accountable for their actions and behaviors?

ANSWER:

1. *Ethics committees and codes*
2. *Licensing boards*
3. *Civil suits of malpractice*
4. *Criminal allegations*

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Sum Up Question

What is CCARQ?

ANSWER:

1. *Culture*
2. *Counter transference*
3. *Area of competence*
4. *Rule out GMC and substance use*
5. *Question the reporter*

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Matching

- | | | |
|----------------------------|---|--------------------------------|
| 1. <i>Civil</i> | → | a) <i>Reasonable therapist</i> |
| 2. <i>Criminal</i> | → | b) <i>Liability</i> |
| 3. <i>Ethics</i> | → | c) <i>Guilt</i> |
| 4. <i>Standard of care</i> | → | d) <i>Practice guidelines</i> |

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Matching

1. *Privacy* → a) *No illegal search and seizure*
2. *Privilege* → b) *Legal term*
3. *Confidentiality* → c) *Ethics term*

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Terminology

The term subpoena is from the Middle English subpena and the Latin phrase sub poena meaning "under penalty"

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Subpoenas and Court Orders

Three Ways to Seek Client Information

1. *Issuance of a subpoena ad testificandum*
 - *A legal demand to give testimony*
2. *Issuance of a subpoena duces tecum (2 tasks)*
 - *A command to appear in court and bring specific documents*

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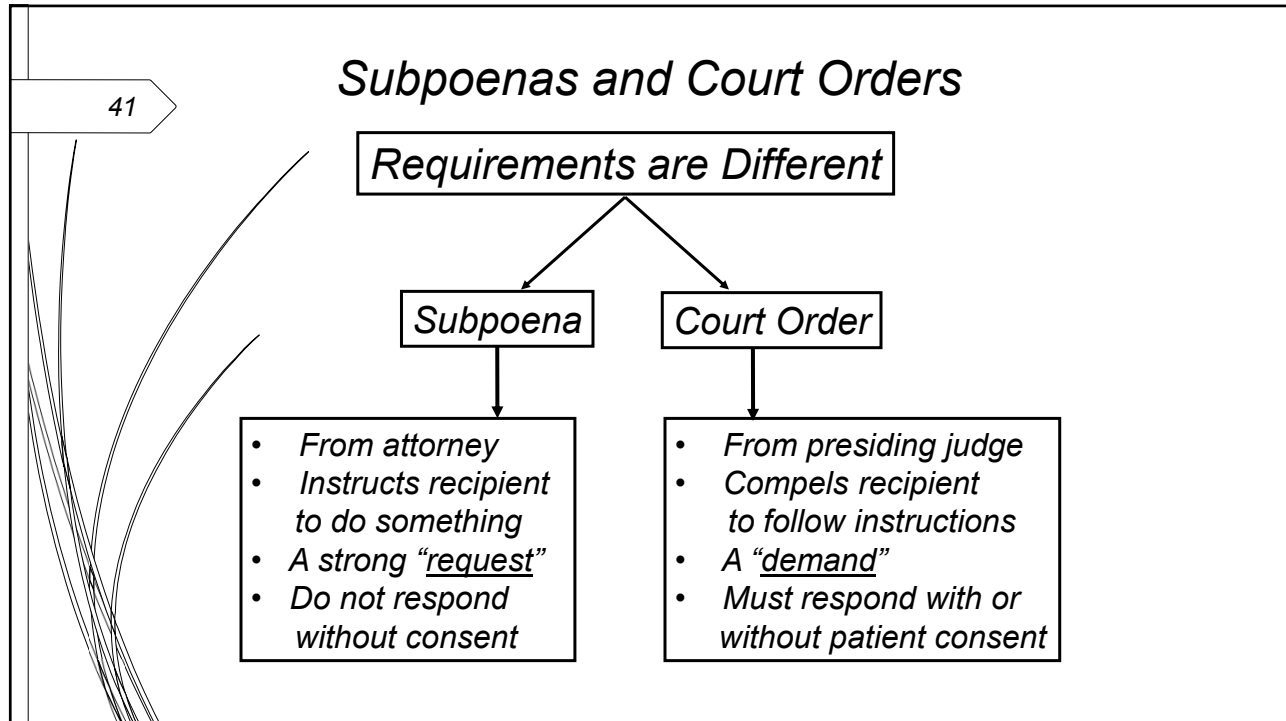
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Subpoenas and Court Orders

Three Ways to Seek Client Information

3. *A court order*
 - *In contrast to a subpoena, a court order is issued by a judge who has evaluated the legal merits of the demand for information and has ruled that it is properly executed and consistent with current law*

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The APA Committee on Legal Issues (COLI)
Borkosky, 2016

American Psychological Association
Committee on Legal Issues (COLI)
Current Position Paper “Coping With Subpoenas”

► For detailed discussion see APA Monitor, 2016

<https://www.apa.org/monitor/2016/07-08/ce-corner>

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Handling a Subpoena Borkosky, 2016

APA COLI: Subpoenas

- *Issued by the clerk of the court in the name of the judge presiding over the case*

OR

- *Lawyers may issue subpoenas themselves as officers of the court*
- *Personal service of subpoena is usually required with proof of service*
 - *Process server*
 - *Notice to consumer*

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HIPAA and Release of Confidential Information Borkosky, 2016

APA COLI: HIPAA and Confidentiality

- *HIPAA does not regulate disclosures to the legal system*
- *Therapist may NOT use HIPAA as reason for refusing to disclose*

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Subpoena

Valid Subpoena

- *Notice to Consumer*
 - *Patient knows about subpoena*
 - *Get written release if possible*
- *Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served **on the consumer whose records are being sought a copy of the subpoena duces tecum**, of the affidavit supporting the issuance of the subpoena, if any, and of the notice described in subdivision (e), and proof of service as indicated in paragraph (1) of subdivision (c)*

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Subpoena Duces Tecum

Valid Subpoena

- *Notice to Consumer*
 - *Patient knows about subpoena*
 - *Get written release if possible*
- *Properly Served*
 - *(by) Court Clerk, mail, email*
 - *Civil: generally 10 days*
 - *Criminal: generally 14 days*
- *Issued by Attorney*
 - *Usually in a civil proceeding*

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Example: California

Service by Means Other than In Person

2020 California Rules of Court.

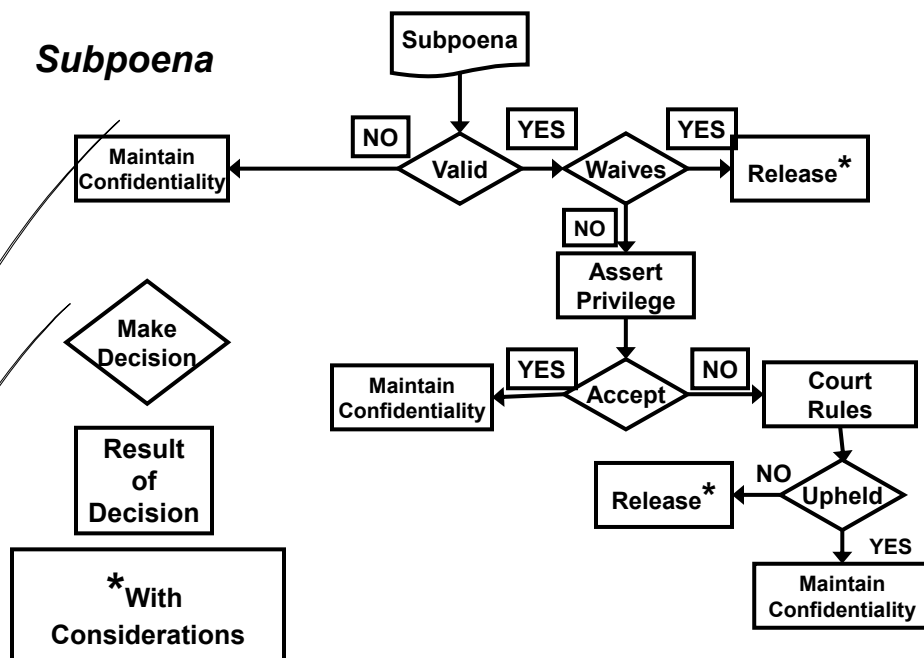
When a document may be served by mail, express mail, overnight delivery, or fax transmission, the document may be served electronically under Code of Civil Procedure section 1010.6 and the rules in this chapter.

Generally a subpoena should be hand served to the therapist but not necessarily

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Subpoena



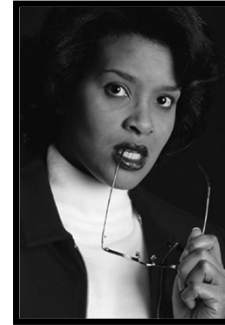
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Handling Subpoenas

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Validity - Review

- *Notice to consumer*
 - *Generally 5 days to object*
- *Proper service*
- *Written waiver by patient*
- *Motion to Quash*
- *Court Order*
- *In Camera Meeting*
 - *Means IN CHAMBERS*



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Multi-Client Situations

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Couples



Group



Family

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Third Party Rule
Kerr, 2009

*The **third-party** doctrine is a United States **legal** theory that holds that people who voluntarily give information to **third parties** have "no reasonable expectation of privacy"*

*Kerr, Orin S. (2009). "The Case for the Third-Party Doctrine"(PDF). Michigan Law Review. **107** (4): 561–602. Archived from the original (PDF) on October 7, 2009.*

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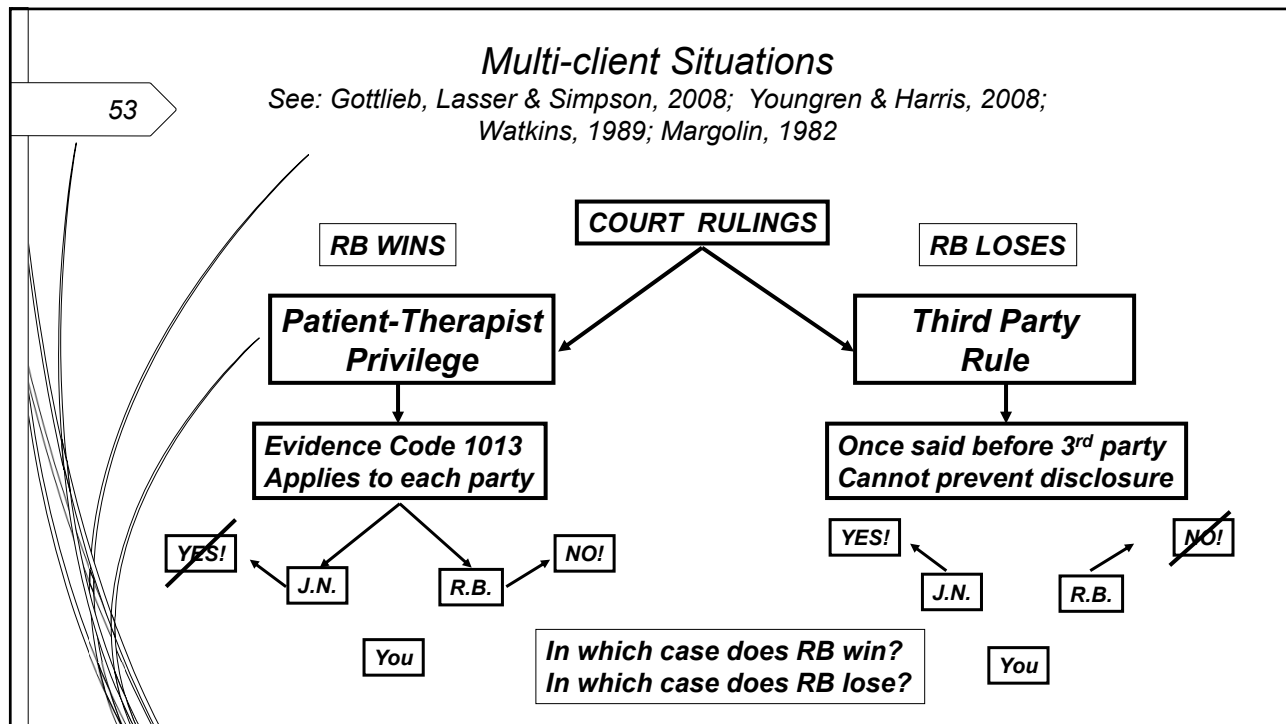
Multi-client Situations

See: Gottlieb, Lasser & Simpson, 2008; Fisher, 2009; Youngren & Harris, 2008; Watkins, 1989; Margolin, 1982

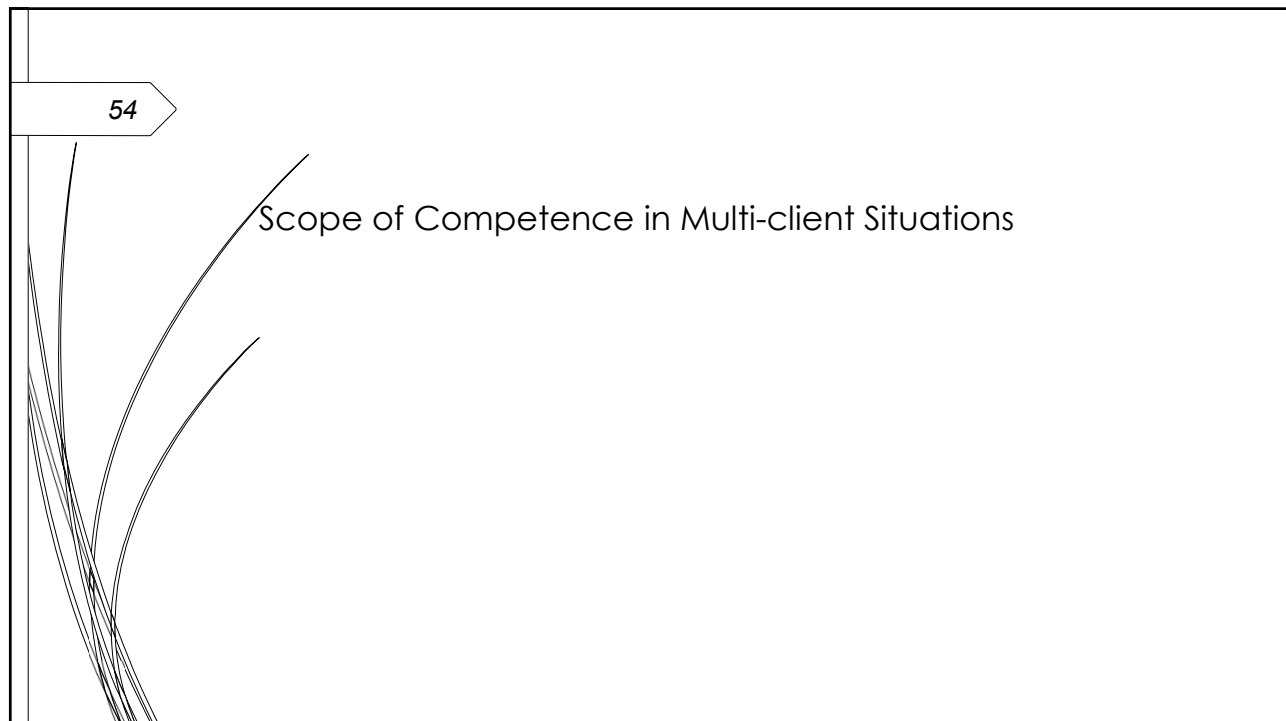
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graph BT; YOU[YOU] --> JN[J.N.]; JN --> YES[YES!]; YOU --> RB[R.B.]; RB --> NO[NO!]
```

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Proper Documentation in Patient Record

Documentation in Patient Record

- *Proper treatment plan*
 - *Evidence based theory and treatment*
- *Important clinical issues must be in record*
- *Important ethical and legal issues must be in record*
- *Goals set, goals met*
- *More later about CURES Act*

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Four Steps for Couple Record Keeping

<https://www.qaprep.com/blog/2015/8/30/couples-counseling-notes-4-steps-to-simplifying-the-process>

STEP ONE:

Incorporate the evidence based treatment plan

- *Example: Gottman, Sue Johnson, etc.*
- *What are the key principles*
 - *How are you using these principles in treatment*
- *What are the common exercises you may have them do at home*
- *COUNTERTRANSFERENCE! "My pleasure..."*
- *Evidence based treatment...* →

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Evidence Based Treatment

IFX\$liuynwiw\$rixkvensr\$jxlvi q ensvgsq tsrirxw jsv\$
ijjigxzi\$exirx\$viexq irx\$

- 5-\$li\$fiw\$|xivrepiznirgi\$
- 6-\$rhznhyep\$vegansriw\$gungesi|tivwi\$erh
- 7-\$exirxw\$viivirgi

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Four Steps for Couple Record Keeping

<https://www.qaprep.com/blog/2015/8/30/couples-counseling-notes-4-steps-to-simplifying-the-process>

STEP TWO: Identify Your Patterns

- *Create a timeline of how couples counseling looks with you and incorporate patterns you use in your notes*
- *Do you do specific things in first sessions?*
- *Knowing where you are headed is instructive*
- *It will often make the process much easier because it prompts you to remember things you sometimes forget*

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Four Steps for Couple Record Keeping

<https://www.qaprep.com/blog/2015/8/30/couples-counseling-notes-4-steps-to-simplifying-the-process>

STEP THREE: FOCUS ON INTERACTION

- *Notes are about interaction*
- *Document the interaction*
 - *Between client and therapist*
- AND*
- *Between the couple*
- *Suggestion: Focus notes on therapist interactions with clients and client interaction with each other*

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Four Steps for Couple Record Keeping

<https://www.qaprep.com/blog/2015/8/30/couples-counseling-notes-4-steps-to-simplifying-the-process>

STEP FOUR: INFORM THE COUPLE (more later)

- *Confidentiality*
- *Holder of privilege*
- *Keeping secrets*
- *Informed consent*

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Competence

AAMFT SEE All of Standard III

PROFESSIONAL COMPETENCE AND INTEGRITY
Marriage and family therapists maintain high standards of professional competence and integrity.

ACA C.2 Professional Competence
C.2.a Boundaries of Competence

APA SEE All of 2.01 – 2.04 Competence

NASW 1.04 Competence

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Protective Measures

<u>Legal & Ethical</u>	<u>Working Diagnosis</u>	<u>Short Term</u>	<u>Theoretical Orientation.</u>	<u>Intermediate Treatment Plan</u>	<u>Longterm Treatment Plan</u>
Suicide	MDD	(C)	Dynamic	→	→
Loss	Adj D	(NC)	CBT	→	→
Homicide	PD	(C)	()	→	→
Kids	Z-Code	(NC)	()	→	→
Tarasoff	PTSD	(C)	()	→	→
Work Issue	GAD	(NC)	()	→	→

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Competence to Treat Multi Clients

Competence

- ▀ *Know the research*
- ▀ *Evidence based practices*
- ▀ *Multi client therapy vs individual therapy*
 - ▀ *Different ethical issues*
 - ▀ *Confidentiality, privilege, informed consent*
- ▀ *Be able to explain treatment plan*

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10:30

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Protective Measures

<u>Legal & Ethical</u>	<u>Working Diagnosis</u>	<u>Short Term</u>	<u>Theoretical Orientation.</u>	<u>Intermediate Treatment Plan</u>	<u>Longterm Treatment Plan</u>
<i>Suicide</i>	<i>MDD</i>	<i>(C)</i>	<i>Dynamic</i>	→	→
<i>Loss</i>	<i>Adj D</i>	<i>(NC)</i>	<i>CBT</i>	→	→
<i>Homicide</i>	<i>PD</i>	<i>(C)</i>	<i>()</i>	→	→
<i>Kids</i>	<i>Z-Code</i>	<i>(NC)</i>	<i>()</i>	→	→
<i>Tarasoff</i>	<i>PTSD</i>	<i>(C)</i>	<i>()</i>	→	→
<i>Work Issue</i>	<i>GAD</i>	<i>(NC)</i>	<i>()</i>	→	→

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Legal and Ethical Issues in Multi-client Situations

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66

More Than Two People In The Room Good Practice, APA Legal Issues, 2014

Client Awareness is Mandatory:

- *Informed consent at the outset of treatment*
 - *When there is one adult patient this is easy*
 - *More complicated with more than one patient*

Specific Areas of Concern:

- *Confidentiality and privilege*
- *Keeping secrets*
- *Who is the patient and who is a collateral*
- *Dangerousness with collaterals*

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More Than Two People In The Room
Good Practice, APA Legal Issues, 2014

Who Are Collateral Contacts

- *Someone who participates in therapy to assist the identified patient*
- *Spouse, partner, significant other*
- *Family member*
- *Friend*

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More Than Two People In The Room
Good Practice, APA Legal Issues, 2014; Knauss & Knauss, 2012

Collateral Contacts

- *Do not have same rights as patients*
- *Expectations are different*
 - *Example*
 - *Partner of a depressed patient attending a session*
 - *To relate his concerns about primary patient*
 - *To learn how to support her recovery*
- *This would not be a couples therapy session*
- *Goal of the session is to support primary client*
- *Therapist's primary duty is to the primary patient*

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More Than Two People In The Room
Good Practice, APA Legal Issues, 2014; Knauss & Knauss, 2012

Example: Typical Ethics Code (APA)

Ethical Issues Related to Multiple Client Records:

- *Carefully consider documentation procedures when conducting couple, family, or group therapy*
- *Respect the privacy and confidentiality of all parties*
- *Informed consent process may include*
- *How the record is kept*
- *Who can authorize its release*

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More Than Two People In The Room
Good Practice, APA Legal Issues, 2014; Knauss & Knauss, 2012

Example: Typical Ethics Code (APA)

Ethical Issues Related to Group Client Records:

- *Describe at the outset the roles and responsibilities of all parties*
- *Discuss the limits of confidentiality*
- *Therapist cannot guarantee confidentiality of information in group counseling*
- *Other group members may reveal session details*

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More Than Two People In The Room
Good Practice, APA Legal Issues, 2014; Knauss & Knauss, 2012

Suggested Procedures

Ethical Issues Related to Group Client Records:

- *Careful record-keeping procedures*
 - *Option: keep separate records for each member*
- *Example*
 - *Completely separate records can be kept for each group member*
 - *Or a brief paragraph description of each session in a group record*
 - *Use initials to identify group members*
 - *Paragraph can also be included in each member's file*

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More Than Two People In The Room
Good Practice, APA Legal Issues, 2014; Knauss & Knauss, 2012

Multiple or Sequential Roles

Should multiclient therapists also treat individually

- *Should a couples' therapist treat one member of the couple individually during or after the couples' course of treatment?*
- *Risk-management experts advise against sequential roles*
 - *Such as providing couples counseling and then switching to individual therapy for one*
 - *Or treating an individual and then shifting to couples' therapy*
- *One member of the couple could complain to a licensing board there was an unethical conflict of interest*
- *Objectivity was impaired.*

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More Than Two People In The Room
Good Practice, APA Legal Issues, 2014; Knauss & Knauss, 2012

Multiple or Sequential Roles

Should multiclient therapists also treat individually

- *These arrangements can also lead to dilemmas regarding issues such as:*
 - *Confidentiality of information revealed in individual sessions*
 - *Group dynamics when some but not all group members are in concurrent individual treatment*
 - *Potential conflicts of interest when the therapist self-refers an individual patient to group therapy or vice-versa*

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More Than Two People In The Room
Good Practice, APA Legal Issues, 2014

Child Clients

When the patient is a child and a parent participates as a “collateral,” the situation is more complex because the parent is usually also the child’s legal representative and therefore has additional rights and responsibilities.

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Privilege with Minors

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Practice Vignette
Welfel, 2016

EXAMPLE VIGNETTE

Seventeen year old Archie tells his therapist at the fourth session that the claim he made of sexual abuse by his stepfather is not true. He now reports he fabricated the story because he wanted his mother to leave his stepfather who has treated his mother badly. Archie made the statements about abuse to his coach, who reported the statements to authorities. As a result, Archie began seeing his therapist, Annette, who was informed of the abuse report when she began individual counseling with Archie.

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Practice Vignette
Welfel, 2016

SEVERE DILEMMA

- *Potential harmful consequences no matter what therapist does*
- *Reference to Ethics Codes does not resolve issue*
- *Ethics Codes provide guidance regarding Archie's confidentiality*
- *Therapist needs more information*
- *What are the limits of confidentiality?*
 - *Danger to self or other; Child abuse; Elder/Dependent abuse*

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Minors' Rights to Confidentiality, When Parents Want to Know: An Ethical Scenario

Beth Brooks, Karen Fiedler, Jayme Waddington, and Katharine Zink

This essay was written in submission for the 2011 ACA Masters Ethics Competition and received the first place award

<https://www.counseling.org/docs/default-source/vistas/minors-rights-to-confidentiality-when-parents-want-to-know-an-ethical-scenario.pdf?sfvrsn=12>

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See Additional Research Document
Confidentiality and Minors

Jackson et al, 2014. Confidentiality and treatment decisions of minor clients: a health professional's dilemma and policy challenge. Springer Plus, published online DOI 10.1186/2193-3-320
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4094761/>

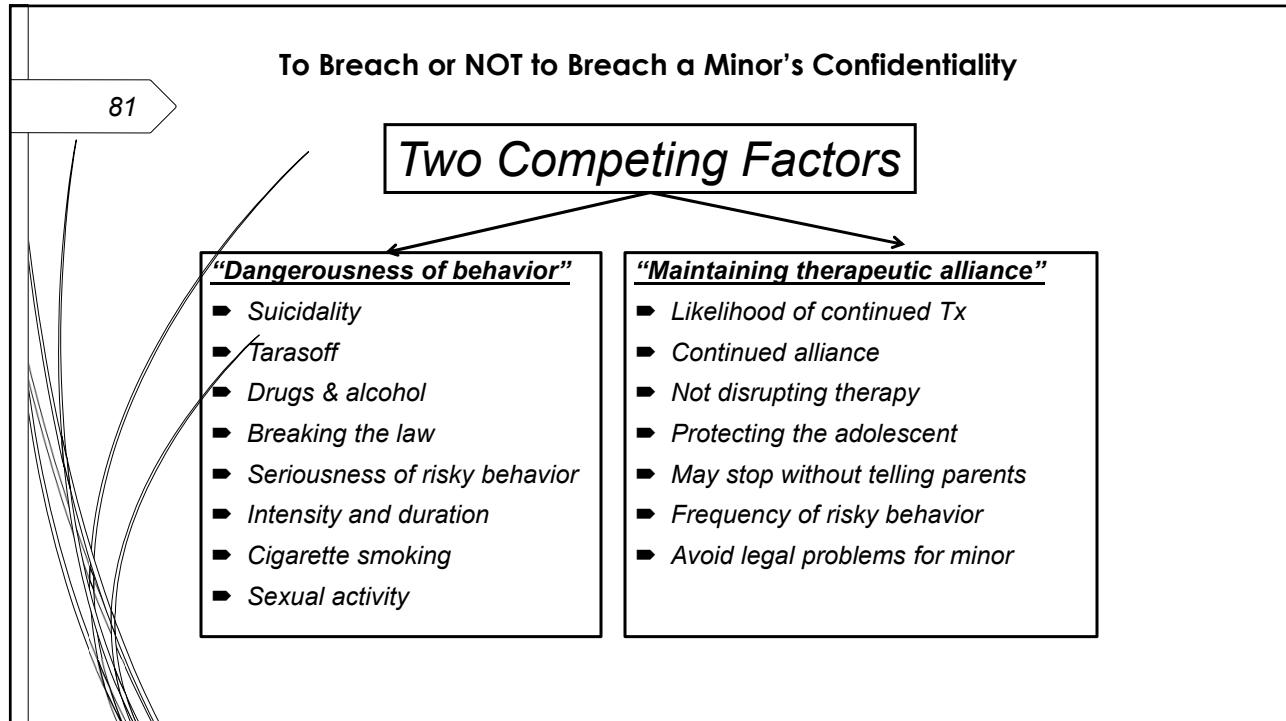
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Privacy Rights for Minors
APA Legal & Regulatory Affairs Staff
APApractice.org

"The general rule under HIPAA is that the minor's parent or guardian exercises the minor's privacy rights. In other words, the parent or guardian would receive the privacy notice required by HIPAA, give consent for releasing the minor's mental health information, and have the right to access and amend treatment records."

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Privilege and Minors

Privilege

- Minors cannot generally give consent for treatment
- Seek assent or permission
 - Do you know who I am
 - Do you know why you are here
 - This is a place to talk about feelings...

7/12
10:00

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Privacy Rights for Minors

Four Elements to Consider (2004)

<https://www.jahonline.org/>

Good Therapy 2019

<https://www.goodtherapy.org>

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Privacy Rights for Minors
Society for Adolescent Medicine
Position Paper

Position One

Inform adolescents and parents or guardians about requirements of confidentiality

- *Give full explanation*
- *Clarify when therapist must breach*

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Privacy Rights for Minors
Society for Adolescent Medicine
Position Paper

Position Two

Remain flexible regarding confidentiality with minors to do what is in best interests of minors

- *Absolute adherence is not desirable*
- *Not required by ethics or law*

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Privacy Rights for Minors
Society for Adolescent Medicine
Position Paper

Position Three

Develop disclosure plan with parents and guardians and minor when minor cannot give consent

- *When is disclosure to others necessary*
- *Focus on adolescent's wishes and needs*

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Privacy Rights for Minors
Society for Adolescent Medicine
Position Paper

Position Four

Carefully consider record keeping guidelines including HIPAA and state laws

- *Know how written and electronic records are available to others*
 - *Court documents*
 - *Custody issues*
- *Consider what is objectionable to minor*

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Holder of Privilege

- Older minors:
 - *Generally may hold their own privilege*
- Younger minors:
 - *Generally the parent of legal guardian holds the privilege*
- Basic rule:
 - *Decided in court or by the judge*

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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4094761/>

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Holding Secrets in Multi-client Situations

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Multi-client Situations
Psychotherapy Networker, 2019

Holding secrets – Three positions

1. Secrets should be kept

- *More likely to obtain honest information*

2. Refuse to keep secrets

- *Secrets are counterproductive to honest communication*
- *Prevents triangulation*

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Multi-client Situations
Psychotherapy Networker, 2019

Holding secrets

3. Third Middle-Ground Position

- *Flexibility*
- *Exercise professional judgment*
- *What is the greatest benefit for family or couple*
- **CAUTION:**
 - *This is a legal and ethical minefield*
 - *Personal communication, J. Younggren*

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Holding Secrets
Cited in Corey et al. 2015, p. 426

*Once a secret is told to the therapist
without the other partner's knowledge,
the therapist has "already colluded."*

Jay Haley, 1953



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Ethical Issues When Holding Secrets

- *Triangulation of therapist*
- *Betrayal by therapist for breach*
- *Damage to alliance*
- *Taking sides*
- *Confidentiality breaches*
- *Explanation of secrets policy in informed consent*

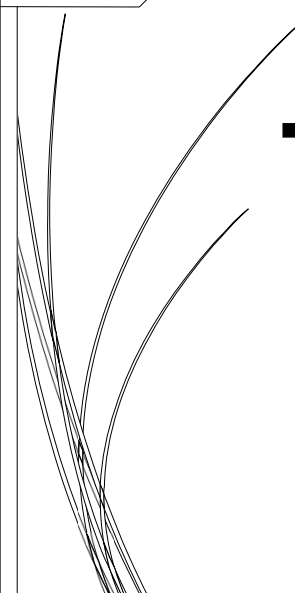
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Typical Reasons for Secrets Shrout, M. & Weigel, D., 2017

- *Infidelities*
- *Painful personal truths*
- *STDs*
- *Betrayals*
- *Lack of trust*
- *Fear of losing partner*

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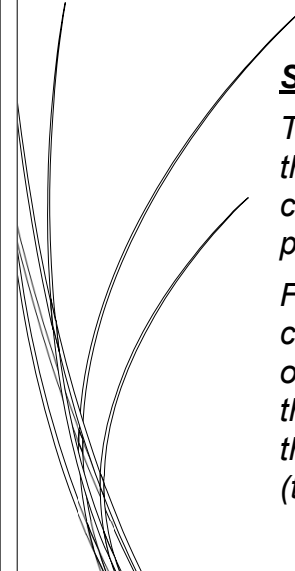


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Informed Consent

► *No Secrets Policy*

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No Secrets Policy Sample, 2016

https://www.aamft.org/AAMFT/Resources/EL_Col.aspx

SAMPLE: “No Secrets” Policy

This written policy is intended to inform you, the participants in therapy, that when I agree to treat a couple or a family, I consider that couple or family (the treatment unit) to be the patient.

For instance, if there is a request for the treatment records of the couple or the family, I will seek the authorization of all members of the treatment unit before I release confidential information to third parties. Also, if my records are subpoenaed, I will assert the psychotherapist-patient privilege on behalf of the patient (treatment unit).

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No Secrets Policy Sample, 2016

https://www.aamft.org/AAMFT/Resources/EL_Col.aspx

SAMPLE: “No Secrets” Policy

During the course of my work with a couple or a family, I may see a smaller part of the treatment unit (e.g., an individual or two siblings) for one or more sessions. These sessions should be seen by you as a part of the work that I am doing with the family or the couple, unless otherwise indicated.

If you are involved in one or more of such sessions with me, please understand that generally these sessions are confidential in the sense that I will not release any confidential information to a third party unless I am required by law to do so or unless I have your written authorization.

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No Secrets Policy Sample, 2016

https://www.aamft.org/AAMFT/Resources/EL_Col.aspx

SAMPLE: “No Secrets” Policy

In fact, since those sessions can and should be considered a part of the treatment of the couple or family, I would also seek the authorization of the other individuals in the treatment unit before releasing confidential information to a third party.

However, I may need to share information learned in an individual session (or a session with only a portion of the treatment unit being present) with the entire treatment unit – that is, the family or the couple, if I am to effectively serve the unit being treated.

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No Secrets Policy Sample, 2016

https://www.aamft.org/AAMFT/Resources/EL_Col.aspx

SAMPLE: “No Secrets” Policy

I will use my best judgment as to whether, when, and to what extent I will make disclosures to the treatment unit, and will also, if appropriate, first give the individual or the smaller part of the treatment unit being seen the opportunity to make the disclosure.

Thus, if you feel it necessary to talk about matters that you absolutely want to be shared with no one, you might want to consult with an individual therapist who can treat you individually.

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No Secrets Policy Sample, 2016

https://www.aamft.org/AAMFT/Resources/EL_Col.aspx

SAMPLE: “No Secrets” Policy

This “no secrets” policy is intended to allow me to continue to treat the couple or family by preventing, to the extent possible, a conflict of interest to arise where an individual’s interests may not be consistent with the interests of the unit being treated. For instance, information learned in the course of an individual session may be relevant or even essential to the proper treatment of the couple or the family.

If I am not free to exercise my clinical judgment regarding the need to bring this information to the family or the couple during their therapy, I might be placed in a situation where I will have to terminate treatment of the couple or the family. This policy is intended to prevent the need for such a termination.

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No Secrets Policy Sample, 2016

https://www.aamft.org/AAMFT/Resources/EL_Col.aspx

SAMPLE: "No Secrets" Policy

We, the members of the _____ (couple/family or other unit) being seen, acknowledge by our individual signatures below, that each of us has read this policy, that we understand it, that we have had an opportunity to discuss its contents with _____ (the therapist), and that we enter couple/family therapy in agreement with this policy.

Clients will sign and date

Parent or guardian will sign and date for minor

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Insurance Issues with Multiclient Situations

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New Diagnostic System

Bulimia Nervosa

Diagnostic Criteria **307.51 (F50.2)**

**ICD-9
307.51
OUTDATED**

**ICD-10
F50.2
CURRENT
SYSTEM**

1. Eating, in a discrete period of time (e.g., within any 2-hour period), an amount of food that is definitely larger than what most individuals would eat in a similar period of time under similar circumstances.
2. A sense of lack of control over eating during the episode (e.g., a feeling that one cannot stop eating or control what or how much one is eating).

B. Recurrent inappropriate compensatory behaviors in order to prevent weight gain, such as self-induced vomiting; misuse of laxatives, diuretics, or other medications; fasting; or excessive exercise.

C. The binge eating and inappropriate compensatory behaviors both occur, on average, at least once a week for 3 months.

D. Self-evaluation is unduly influenced by body shape and weight.

E. The disturbance does not occur exclusively during episodes of anorexia nervosa.

Specify if:

In partial remission: After full criteria for bulimia nervosa were previously met, some, but not all, of the criteria have been met for a sustained period of time.

In full remission: After full criteria for bulimia nervosa were previously met, none of the criteria have been met for a sustained period of time.

Specify current severity:

The minimum level of severity is based on the frequency of inappropriate compensatory behaviors (see below). The level of severity may be increased to reflect other symptoms and the degree of functional disability.

Mild: An average of 1–3 episodes of inappropriate compensatory behaviors per week.

Moderate: An average of 4–7 episodes of inappropriate compensatory behaviors per week.

Severe: An average of 8–13 episodes of inappropriate compensatory behaviors per week.

Extreme: An average of 14 or more episodes of inappropriate compensatory behaviors per week.

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Insurance Issues

Insurance Company Contacts

- May request information
- “When will patient be “cured”?”
- Example:
 - F-Code Major Depressive Disorder, Single Episode
 - “Is patient suicidal?”
 - May be part of DSM criteria
 - Can you answer when Insurance Company calls???

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Insurance Fraud

“Insurance” Diagnosis

- *Must give correct diagnosis*
 - *Even if company refuses reimbursement*
- *Example*
 - *Section II diagnosis versus Personality Disorder*
 - *Section II diagnosis versus Z-Code*

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“Insurance” Diagnosis Knapp et al., 2013

*The practice of deliberately giving unwarranted diagnoses or otherwise misrepresenting services is an example of **insurance fraud**, which is the systematic misrepresentation of billing information for personal gain. Even the most honest health care providers may sometimes make a billing error. A mistake in billing can be corrected by contacting the payer (or the insurer) and offering to correct the error.*

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Relationship Therapy Diagnosis

Z62.820	Parent-Child Relational Problem
Z62.891	Sibling Relational Problem
Z62.29	Upbringing Away From Parents
Z62.898	Child Affected by Parental Relationship Distress
Z63.0	Relationship Distress With Spouse or Intimate Partner
Z63.5	Disruption of Family by Separation or Divorce
Z63.8	High Expressed Emotion Level Within Family
Z63.4	Uncomplicated Bereavement

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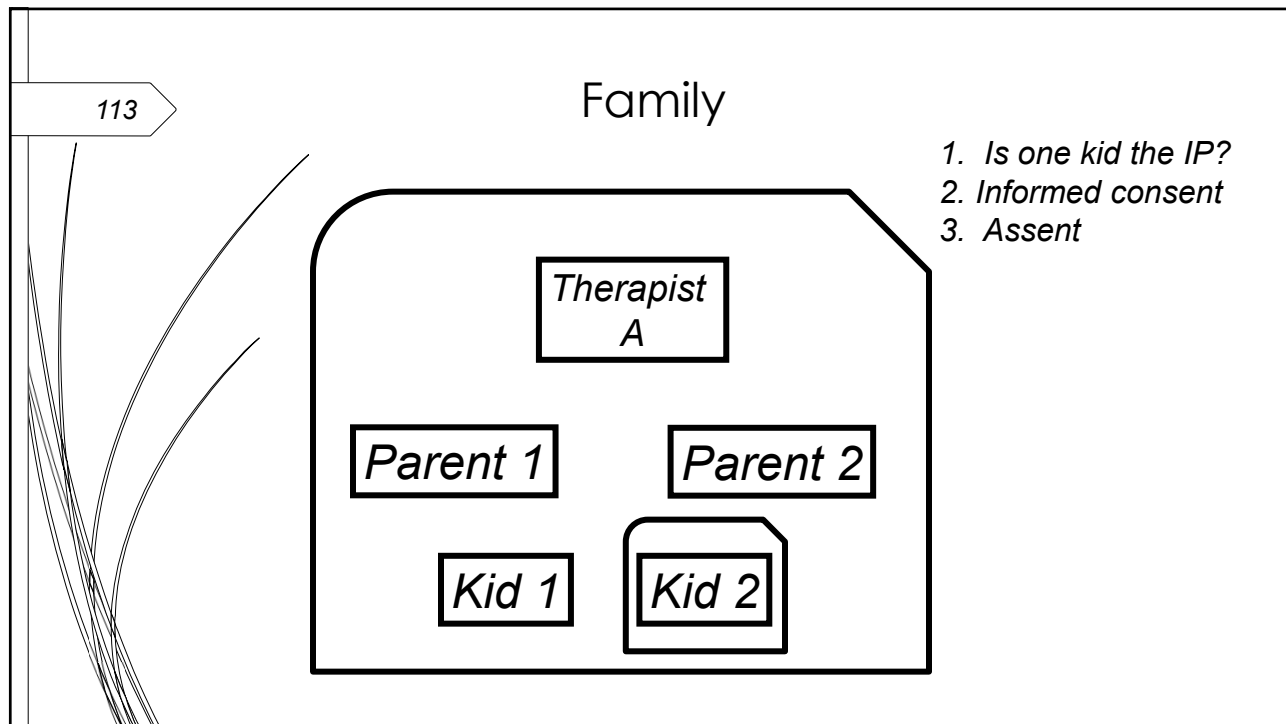
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Couples

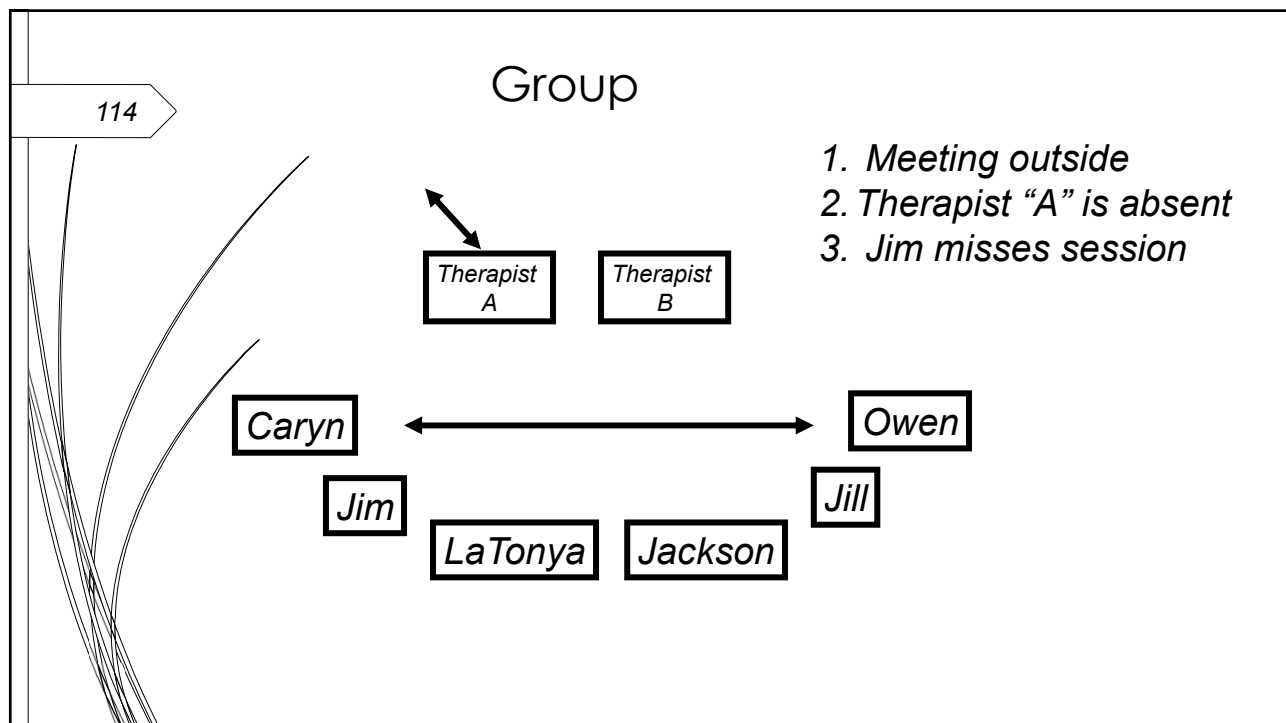
The diagram illustrates a therapeutic concept for couples. It features a large rounded rectangle labeled "YOU" at the bottom. Inside this rectangle are two smaller boxes, one labeled "J.N." and one labeled "R.B.". From the top-left corner of the "J.N." box, an arrow points to the word "Yes!". From the top-right corner of the "R.B." box, an arrow points to the word "NO!".

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Decision Making: Group Therapy

<u>DEMOCRACY</u>	<u>DICTATORSHIP</u>
<i>Higher functioning</i>	<i>Lower functioning</i>
<i>Make their own "rules"</i>	<i>Facilitator makes more decisions</i>
<i>Part of the process</i>	<i>Money is ALWAYS a dictatorship!</i>
<i>Depending upon the focus and purpose of the group</i>	

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A-116

Updates to Record Keeping

- Electronic Records
- CURES Act
- Open Notes
- ONC
- Office of National Coordinator for Health Information Technology

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Ethical Issues for Electronic Records References

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10/12
10:45

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Ethical Issues with Electronic Record

COPYING AND PASTING

- Copying portions of previously written notes and pasting them into a currently drafted note creates several problems
 - Using other patient's name; breach of confidentiality
- Copying and pasting typical behaviors from another chart of a similar patient that are not accurate
 - Could easily be wrong information for the current patient
 - For example: which criteria of the same dx does current client meet that may not have been transferred over from previous client
- Copying previous therapist or co-therapist note into their own note
 - Instead of writing it them selves
 - Instead of obtaining the patient's historical data themselves

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Ethical Issues with Electronic Record

AUTHORSHIP AND TIMING OF RECORDS

- *Do not guess when note was written*
- *For example, notes may have been drafted in advance*
 - *Left in pending or draft status*
 - *Completed and signed many hours later*
 - *Additional patient data and other opinions may have been obtained since writing the draft note*
- *The reader may have difficulty knowing what time and what events occurred at what time.*

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Ethical Issues with Electronic Record

USING PREFORMULATED TEMPLATES

- *Information may not match the actual client*
- *Clinicians may carelessly retain fragments of another patient that do not apply to the current patient*
- *Example: one community-based therapist observed that all patient reports from one clinician were all identical*

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Ethical Issues with Electronic Record

THE PURPOSE OF THE RECORD

- *Purpose of EHR is to provide more efficient documentation*
- *Implementation of the EHR creates a subtle transformation of the purpose of the medical record*
 - *From its established role of recording a patient's medical data... to its new role of providing adequate documentation to justify coding and billing for payment*

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The CURES Act and Open Notes

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The CURES Act and Open Notes

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21st Century CURES Act (2016, 2021)

The OPEN NOTES Policy

Two Primary Elements

***Immediate
Patient
Access***

***No
Blocking
Policy***

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The CURES Act and Open Notes

Federal Government Mandate 4/6/21

Eliminates any type of information blocking

Primarily meant for medical records

Includes therapy clinical notes

Patients get IMMEDIATE access to digital data

Generally via a patient portal

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The CURES Act and Open Notes

Suggestion for Writing Notes

- ***Avoid abbreviations.***
 - *For example, “SOB” does not mean Shortness of Breath to most patients!*
- ***Avoid language that may seem judgmental***
 - *“noncompliant” and “unreliable.”*
 - *Documented behaviorally*
 - *“Patient reports he did not attend AA meetings as suggested.”*
- ***Avoid copying and pasting***
- ***Use plain language rather than jargon***

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The CURES Act and Open Notes

Eight Types of Records for IMMEDIATE Access

The eight (8) types of clinical notes that must be shared are outlined in the United States Core Data for Interoperability (USCDI), and include:

- . *Consultation notes*
- . *Discharge summary notes*
- . *History & physical*
- . *Imaging narratives*
- . *Laboratory report narratives*
- . *Pathology report narratives*
- . *Procedure notes*
- . *Progress notes*

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The CURES Act and Open Notes

Notes that are not included in OPEN NOTES

- *Psychotherapy notes are not included*
 - *Can be separated from the rest of the individual's medical record*
- *Information compiled in reasonable anticipation of, or use in a civil, criminal or administrative action or proceeding*

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The CURES Act and Open Notes

Cures Act Requires OPEN NOTES

Philosophy that all have access to clinician notes

Currently 50 million patients access Open Notes

Initially strong resistance

Patients will misunderstand terminology

Patients will be confused

Currently

- 96% of patients using Open Notes understand the records

- 7% asked for help if they failed to understand

11/12

11:00

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The CURES Act and Open Notes

Cures Act Requires OPEN NOTES

► SAHM – SOCIETY FOR ADOLESCENT HEALTH AND MEDICINE

► How does CURES Act and OPEN NOTES deal with minors

Understanding specific state minor consent laws as well as state and federal confidentiality laws is essential both for implementation of the Privacy exception in the Final Rule of the CURES Act and for the development of institutional policies that protect adolescents' confidential information within the EHR.

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The CURES Act and Open Notes

Implementing OPEN NOTES

1. *Be clear and succinct*
2. *Respectfully address concerns*
3. *Use supportive language*
4. *Agency will use FHIR*
 - *New standard for sharing information*
 - ***Fast Healthcare Interoperability Resources***
 - *This is how patient accesses records and data*

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Sum Up Questions

A subpoena is originated by _____.

A Court Order has the power of _____.

ANSWER:

a. A Judge; An Attorney

a. An Attorney; A Judge

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Sum Up Questions

What are the two types of ruling a judge can make in a couples situation when there is a dispute about releasing the records and the parties do not agree

ANSWER:

Third Party Rule and Patient-Therapist Privilege

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Sum Up Questions

What are the three primary ways client information can be sought?

ANSWER:

Subpoena duces tecum

Subpoena ad testificandum

Court order

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Sum Up Questions

What are the two types of subpoenas?

ANSWER:

Subpoena Duces Tecum

Subpoena Ad Testificandum

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Sum Up Questions

Which subpoena requires “two tasks”?

ANSWER:

Subpoena Duces Tecum

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Sum Up Questions

Which subpoena requires testimony only?

ANSWER:

Subpoena Ad Testificandum

137

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Sum Up Questions

What are the two primary elements of the CURES Act?

ANSWER:

Immediate access to records

No blocking of records

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