



HIGHER THOUGHT
INSTITUTE

Exploring Ethical Obligations: Boundaries, Confidentiality & Mandated Reporting

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Outline



- **Introductions**
- **Revisiting Ethics in Professional Practice**
 - What do we mean by “ethical”? How is “ethical” related to “legal”?
- **Drawing the Lines: Setting (& maintaining) Professional Boundaries**
 - Explore guidance from ethical codes on how to define and effectuate appropriate boundaries with clients.
- **Keeping Client Confidences: From the Basic to the Difficult**
 - Explore the concepts of confidentiality and privilege, finding foundations in ethical codes and the law.
- **Making the Tough Call: Reporting Suspected Child Abuse & Neglect**
 - Explore a specific area of practice where professional ethics and legal obligations meet (often in conflict): the role of mandated reporters.
- **Questions and Conclusions**

Introductions

- Who are You?
- Who Am I?
 - *Limitation of my role*
- Why We're Here?

Revisiting Ethics in Professional Practice

- What do you know about Ethics?
- Where did you learn it?
- What professions have ethics?
- Are “ethics” and “the law” interchangeable?

Purposes of Professional Code of Ethics



- 1) Identifies core values on which profession's mission is based
- 2) Summarizes broad ethical principles reflecting profession's core values
- 3) Establishes ethical standards to guide professional practice
- 4) Designed to help professionals identify relevant considerations when obligations conflict or ethical uncertainties arise
- 5) Provides ethical standards to which the professional itself, as well as the general public, can hold the profession/professional accountable
- 6) Socializes practitioners new to the field to a professions mission, values, ethical principles, and ethical standards

DOES NOT PROVIDE GUIDANCE FOR ALL SITUATIONS/ ALLOWS FOR VARIANCE
(Use of language: “may”, “should”, “must”)

Example:

History of NASW Code



- Early days of social work
 - Little attention paid to professional ethics
- 1915: Abraham Flexner challenged social workers to develop a code of ethics, to develop as a “profession”
- 1920: Mary Richmond authors experimental Code of Ethics for social workers
- 1946: First formal code of ethics was adopted by AASW
 - 14 “I” statements
 - "I give precedence to my professional responsibility over my personal interests,”
 - "I respect the privacy of the people I serve.”
- 1960: NASW published its first Code of Ethics
 - Periodically revised at decreasing intervals
 - Most recently revised 2021

Having an ethical code helps a profession gain credibility

Clusters of Ethical Responsibility



To Clients

To Colleagues

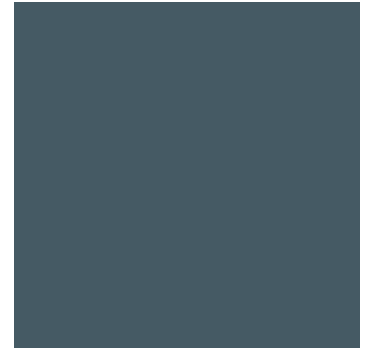
In Practice Settings

As Professionals

To the Profession

To the Broader Society... (large legal implications)

Ethical Principles



Beneficence

Non-Maleficence

Autonomy/Self-Determination

Justice

Ethics and the Law: An Exercise



	Ethical Behavior	UNethical Behavior
Legal Behavior		
ILLEGAL Behavior		

Failure to Follow “Law”: Possible Sanctions

- Statutory actions
- Regulatory actions
- Civil/ criminal liability

Fewer than 5% will ever get sued
More will be threatened by suit



Failure to Follow Professional Codes: Possible Sanctions



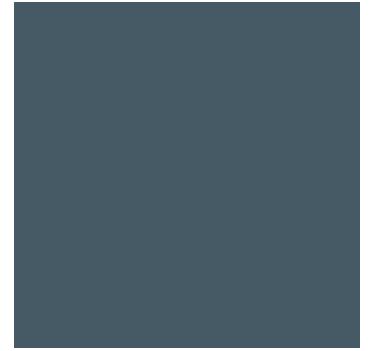
- Binding on organizational members
 - Don't follow the code and you're a member:
 - Sanctioned
 - Membership revoked
- Code as Law (differs by state)
 - Failure to follow code is legal violation
 - Lose license
 - Civil liability
- Failure to follow the code does not necessarily mean that license will be pulled, or legal sanctions available
- Professional Code is ACCEPTED professional standard
 - If sued, failure to follow the Code would be appropriate evidence.

Complaints of Unethical Practice: Social Work Example Over 10 years



- Fewer than 100 complaints a year
- Fewer than ¼ accepted for adjudication
- About 10% accepted for adjudication but closed before a hearing (settlements or adjudications, or a withdrawal of the complaint)
- Majority of cases that went to adjudication supported complain/ found ethics violations

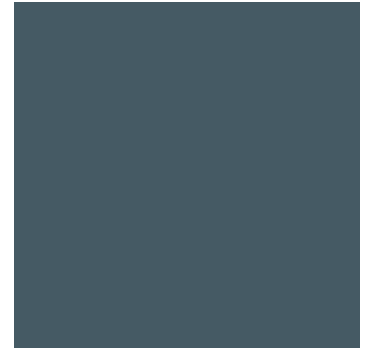
Complaints of Unethical Practice: Most Common Violations?



1. Sexual activity
2. Dual relationship
3. Other boundary violations
4. Failure to seek supervision or consultation
5. Failure to use accepted practice skills
6. Fraudulent behavior
7. Premature termination
8. Inadequate provisions for case transfer or referral
9. Failure to maintain adequate records or reports
10. Failure to discuss policies as part of informed consent

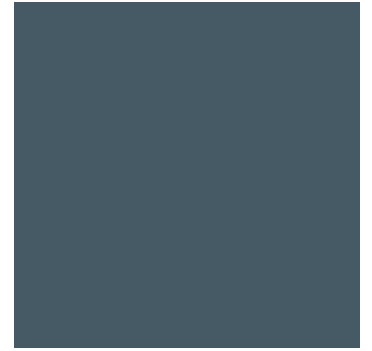
Complaints of Unethical Practice:

LEAST Common Violations?



1. Confidentiality breaches with friends or family
2. Confidentiality breaches with insurers or others
3. Mishandled records
4. Failure to secure backup coverage
5. Failure to report a suspicion of child abuse
6. Failure to respond to a client's self-destructive behavior

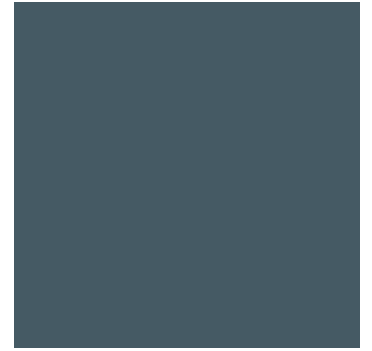
Protecting Yourself



- First Line of Protection: Prevention
 - Informed Consent
 - Make clear the definition of professional relationship with clients
 - Early and often in relationship

Satisfying Informed Consent Requirements

- Verbal
- Written
- Frequent areas of concern
 - Goals of relationship
 - Nature of relationship/expectations
 - Confidentiality & its limits



Crafting Statements/Forms



- For English-speaking competent adults
- For teenagers
- For pre-teens
- For young children
- For toddlers
- For non-English-speaking competent adults
- For non-competent adults

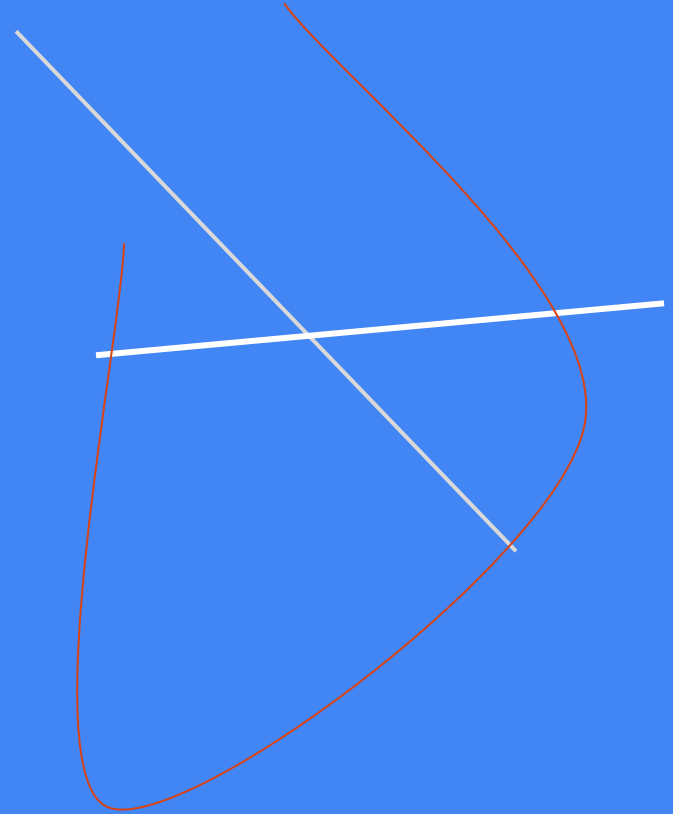
Drawing Lines:

Setting (& maintaining)

Professional

Boundaries

- What are the lines?
- Where are the lines?



Physical Contact

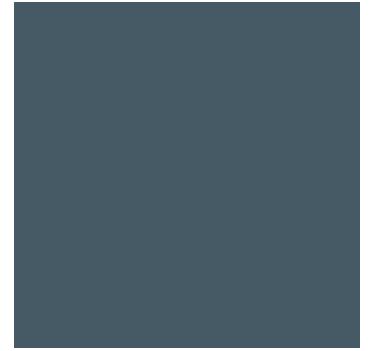


- Should not engage in physical contact with clients when there is a possibility of psychological harm to the client as a result of the contact
 - Handshakes, high-fives and fist-bumps
 - Hugs, cradling, and caressing
- Set clear boundaries about contact before contact

Conflicts of Interest

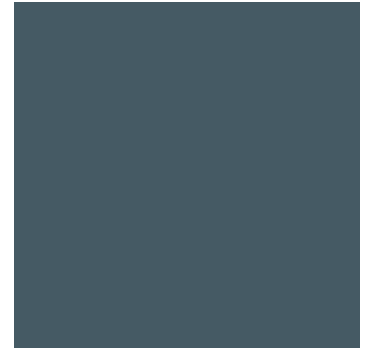
- Dual or multiple relationships
 - Defining
 - Avoiding
 - When unavoidable, take steps to protect clients:
 - Set clear, appropriate, & culturally sensitive boundaries
- Working with two “related” clients
 - Who/what is the client?

Sexual Relationships



- Sexual activities/contact with current clients, consensual or not
 - NEVER OKAY
- Sexual activities with former clients
 - NOT OKAY
 - Burden of proof on Professional
- Professional relationship with former sexual partner
 - NOT OKAY
- Sexual relationship with family/friends of current/former clients.
 - NOT OKAY

Potential Damage from Boundary Issues

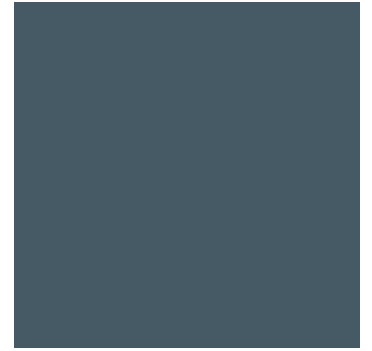


- To client/other person
 - Emotional
- To self
 - Emotional
 - Professional
 - Monetary

Preparation (& then Action)

Key to Protection

(Personal & Professional)



- Setting Boundaries
 - Part of the informed consent process
- Keep on the lookout
- Acknowledge as early as possible
- Address with client immediately

Keeping Client Confidences:

From the Basic to the Difficult



Client Confidentiality

- Defining Confidentiality
 - Keep information private
 - “Hold confidences”



Confidentiality vs. Privilege



- Not synonymous terms; but related
 - Confidentiality is professional responsibility provided through ethics & law
 - Privilege protects information from admission in legal proceeding.
- Privilege derives from relationship with expectation that information passed within the relationship will remain confidential.
- Privileges you know about?

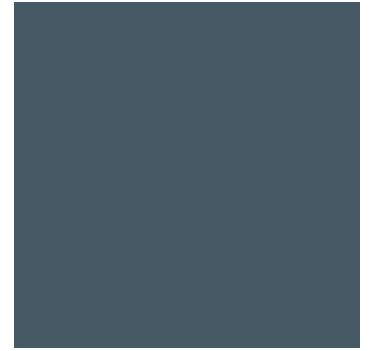
Therapist Privilege?



- Jaffee vs. Redmond (U.S. Supreme Court 1996)
- Limited to confidences exchanged in therapeutic relationship
 - Not case management, etc
- Who holds privilege?
- When can privilege be severed?

Simple Confidentiality Rules

- Client records
 - On Paper
 - Electronically
- Talking about work
 - At work
 - At home

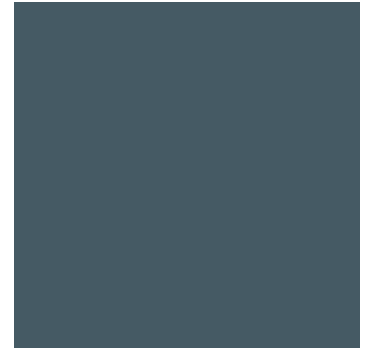


Special Situations

- Working with groups
- Working with families
- Working with minors (and their parents)
- Working with the cognitively impaired

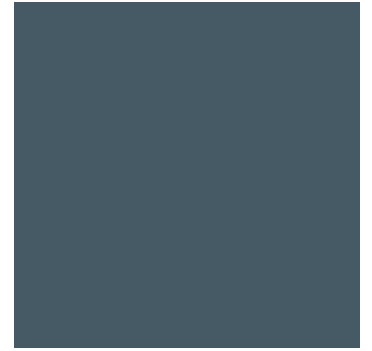


What about HIPAA?



- Health Insurance Portability and Accountability Act of 1996
 - Federal Law
- Promotes greater sensitivity/awareness of private information
- Provides exceptions for legally required reports to public health and other government authorities.

Treatment for Addiction/ Substance Use Disorders: Protected Records



- Special protection provided by federal law
 - To encourage treatment
- Exemptions stated in policy

Breaching Confidentiality



- Client Release
- Duty to Warn/Protect from client caused harm
 - Tarasoff Case
- Duty to Protect client from self-harm
- Defense of Professional
- Legally Compelled: Subpoena/Court Order
- Mandated Reporting
 - Child Maltreatment
 - Elder Abuse
 - “Vulnerable persons”

Protecting Yourself

- Preparation: Informed Consent
- Seek guidance/legal advice



Making the Tough Call

**Reporting Suspected
Child Abuse & Neglect**



Role of Mandated Reporter:

Ethical Conflicts



- Codes of ethics allow for breach of confidentiality to report
- Other issues with confidentiality:
 - Confidentiality of reporter
 - Protection of records
- Concern for client self-determination
- Participation in imperfect (or worse) system

Informing a Client About a Report

- Should you tell a client before you make the report?
- Should you tell a client after you make the report?
- Should you tell a client at all?

Concerns for Under-reporting

Professionals:

- Not clear about legal definitions of abuse/neglect
- Influenced by professional beliefs, values, and experiences

Professionals report only half the incidents they knew about:

- Confusion/ misunderstanding about laws & procedures
- Lack of knowledge/ awareness of warning signs/clues
- Concerns for being “wrong”
- Concerns for backlash

Concerns for Over-reporting

- Vast Majority of Reports (66%+) UNSUBSTANTIATED After Investigation
 - What does “Unsubstantiated” mean?
 - Changing investigation standard in NYS
- Sources of Unsubstantiated Reports
 - Anonymous Reports
 - Schools
 - Mental Health Providers

Concerns for Racial Disproportionality

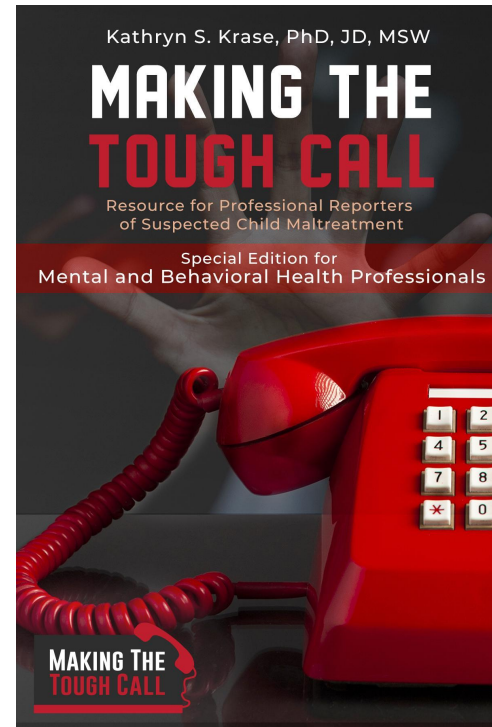
- In NYS Black families are:
 - 7 times more likely than white families to be reported to the SCR
 - 8 times more likely than white families to have a case indicated
 - 11 times more likely than white families to be separated (OCFS, 2019)
- 53% of Black children's parents are investigated by CPS (Kim, et al., 2017)
- Black & Hispanic children with minor head trauma are 2-4 times more likely to be evaluated and reported for suspected abusive head trauma (Hymel, et al., 2018)
- Black mothers are more likely to be reported by hospitals when there is a positive drug test during labor and delivery (Chasnoff, et al., 1990)

Concerns for Failing System

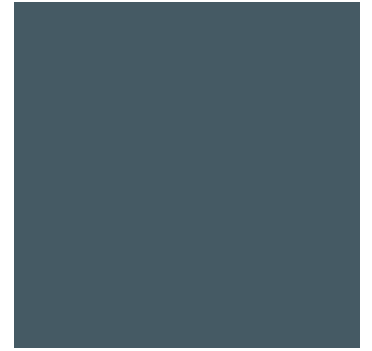
- Traumatic Investigations
- Traumatic Family Separations
- Unhelpful/unproven interventions
- Calls for Abolition of Mandated Reporting
- Calls for Abolition of CPS

Resources

- Kempe Center, [Call to Action Series](#)
- Fordham GSS, [Narrowing the Front Door Series](#)
- Mandated Reporters Against Mandated Reporting
- [My DropBox Folder](#)



Conclusions/Questions/Comments



Thank you!

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Find out more about me at:

<https://www.kraseconsulting.com>

<https://www.makingthetoughcall.info>