



HIGHER THOUGHT
INSTITUTE

**Exploring Ethical Obligations:
Boundaries, Confidentiality
& Mandated Reporting**

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Outline

- Introductions
- Revisiting Ethics in Professional Practice
- Drawing the Lines: Setting (& maintaining) Professional Boundaries
- Keeping Client Confidences: From the Basic to the Difficult
- Making the Tough Call: Reporting Suspected Child Abuse & Neglect
- 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 Code: Possible Sanctions



- Binding on organizational members
- Code as Law (differs by state)
 - Failure to follow code is legal violation
- 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



- Complaints to NASW as Professional Organization
- Fewer than 100 complaints a year
- Fewer than $\frac{1}{4}$ 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: Ohio over 28 Years



- Complaints to Ohio Licensing Board
- Counselors, MFTs and Social Workers
- 2078 complaints
- 29% substantiated

Magiste, E. J. (2020). Prevalence rates of substantiated and adjudicated ethics violations. *Journal of Social Work*, 20(6), 751–774. <https://doi.org/10.1177/1468017319837521>

Complaints of Unethical Practice: Most Common Violations?



1. Boundary Violations
 - Sexual activity
 - Dual relationship
 - Other boundary violations
2. Licensure Issues
 - Misrepresentations made on license applications
 - Failure to comply with CE audit requirements
 - Performance of professional duties while license had lapsed.
3. Practice Issues
 - Failure to seek supervision or consultation
 - Failure to use accepted practice skills
 - Premature termination
 - Inadequate provisions for case transfer or referral
 - Failure to maintain adequate records or reports
 - Failure to discuss policies as part of informed consent

Complaints of Unethical Practice: LEAST Common Violations?



- Confidentiality breaches with friends or family
- Confidentiality breaches with insurers or others
- Mishandled records
- Failure to secure backup coverage
- Failure to report a suspicion of child abuse
- 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

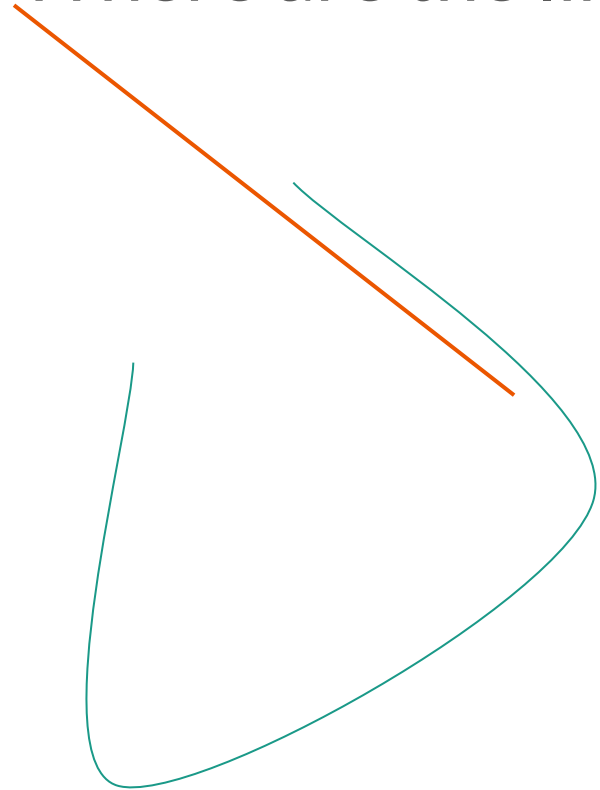


- For English-speaking competent adults
- For children of different ages
- For non-English-speaking competent adults
- For non-competent adults



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
 - [Legality differs by state](#)
- 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 Conflict



- 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



Ethical Conflicts for Mandated Reporters



- 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 Failing System

- Under-reporting
- Over-reporting
- Racial Disproportionality
- Traumatic Investigations
- Traumatic Family Separations
- Unhelpful/unproven interventions
- Calls for Abolition

Conclusions/Questions/Comments

Thank you!

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Find out more about me at:

<https://www.kraseconsulting.com>

<https://www.makingthetoughcall.info>

