



HIGHER THOUGHT
INSTITUTE

What Happens in Therapy, Stays in Therapy. Unless...

Exploring the Ethics of Confidentiality

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Learning Objectives

1. Explain the ethical obligation to keep client information confidential.
2. Demonstrate the legal obligation to keep client information confidential.
3. Competently discuss with their clients these obligations so that clients make an educated decision when sharing information with the professional.
4. Appropriately respond to ethical, legal, and moral conundrums faced when considering to breach client confidentiality.



Session Outline

- Introductions
 - The Ethics & Law that Govern Confidentiality
 - Keeping Client Confidences: From the Basic to the Difficult
 - Talking about Clients to Others
 - Client Records
 - Duty to Protect from Harm
 - Case Studies & Practice Implications
 - Conclusions/Questions
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Introductions

Kathryn S. Krase, PhD, JD, MSW

- Principal Consultant with [Krase Consulting](#)
- Expert on professional ethics.
- Substantial experience consulting with government and community based organizations to develop policy & practice standards.
- Disclaimer: Limits of my reach today

Who are YOU?



The Ethics & Law that Govern Confidentiality



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?

Ethical Principles Common Across Professions

BENEFACTENCE

Doing Good

NON-MALEFACTENCE

Avoiding Harm

AUTONOMY

Right to Make Decisions for Yourself

JUSTICE

Fairness/Equity

Clusters of Ethical Responsibility

- To Clients
- To Colleagues
- In Practice Settings
- As Professionals
- To the Profession
- To the Broader Society...



**Where are these
Ethical Responsibilities
Defined?**

*Our Ethical Codes
& the Law*



Purposes of Professional Code of Ethics

- Identify core values on which profession's mission is based
- Socialize new practitioners
- Summarize broad ethical principles reflecting profession's core values
- Establish ethical standards to guide professional practice
- Help professionals identify relevant considerations when obligations conflict or ethical uncertainties arise
- Provide ethical standards to which the professional itself, as well as the general public, can hold the profession/professional accountable

DO NOT PROVIDE GUIDANCE FOR ALL SITUATIONS/
ALLOWS FOR VARIANCE

(Use of language: "may", "should", "must")



Ethics & the Law

- Making law is more involved than making ethical codes
- The law (largely) defers to professional codes of ethics

DO NOT PROVIDE GUIDANCE FOR ALL SITUATIONS/
ALLOWS FOR VARIANCE

(Use of language: “may”, “should”, “must”)

When you don't follow the Rules...

Failure to Follow the Law?

Statutory actions

Regulatory actions

Civil/ criminal liability

VERY RARE

Failure to Follow the Code?

Professional Code is ACCEPTED professional standard

Failure to follow the Code as evidence in lawsuit

License is NOT automatically pulled

ALSO VERY RARE



**Most Common
Professional Ethics Violation**

**CONFIDENTIALITY
VIOLATION**

But, no one usually knows...



Defining “Confidentiality”

- Keep information private
- “Hold confidences”





Protected Health Information (PHI)



- What is PHI?
 - Information that can be linked to a particular person (ie., is person-identifiable) that arises in the course of providing a health care service.
 - “Use”: internal sharing of PHI
 - “Disclosure: external sharing of PHI
 - Rules governed by HIPAA
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What is 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

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

- When sharing PHI, you (generally, with a few exceptions) need to have client's permission to do so
 - Important to explain confidentiality expectations & limitations through INFORMED CONSENT PROCESS
 - Clients get to choose what they share with you
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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





Keeping Client Confidences:

From the Basic to the Difficult





Talking about Clients to Others

- We are HUMANS, not machines
 - Talking about work is natural
 - Must be thoughtful of our obligation to client
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Talking about Clients to Others: At Work

- Sharing PHI allowed... as long as for professional purposes
 - To further client care
 - To further professional development
 - To meet legal obligations
 - With client's permission
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Talking about Clients to Others: At Home



- Sharing PHI is NOT allowed
- What about sharing client info, but not PHI
 - Walk the line carefully

- SOCIAL MEDIA DANGERS







Protecting Clients from Others: Group Work

- Importance of Informed Consent
 - Realities of human contact
 - Empowering clients to choose what they share
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Protecting Clients from Others: Couples/Family Work

- Importance of Informed Consent
 - Realities of human contact
 - Empowering clients to choose what they share
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Protecting Clients from Others: Working with Minors

- Who's PHI is it?
- What do you have to tell parents?
 - [Resource](#)





Protecting Clients from Others: Cognitively Impaired Adults

- Who's PHI is it?
- What do you have to tell guardians?



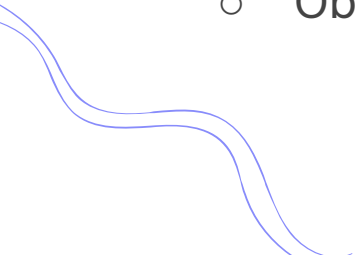
Client Records

- Obligation to keep records
 - Protects you
 - Helps client
- Obligation for them to be accurate, current, and pertinent
 - Include: nature, delivery, progress, and results and fees.
- Maintenance
- Security
 - Electronic records
- Retention
 - Depends on the state
 - When no state guidance, look to prof ethics


● [RESOURCE](#)



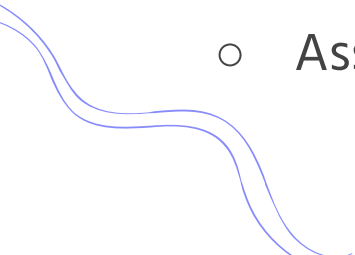
Release of PHI: Client Authorized

- Client Release
 - Written
 - Verbal
 - Client right to release
 - Ensuring understanding
 - Obligation to minimize breach
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Release of PHI: Compelled through Subpoena/Court Order

- Subpoenas are not all the same
 - Lawyer subpoenas
 - Judge ordered subpoenas
 - Other Court Orders
 - Right to challenge/limit
 - Professional autonomy
 - Asserting privilege
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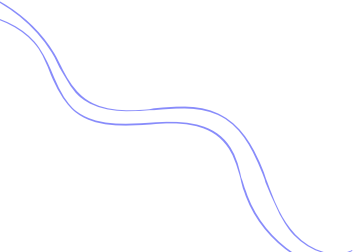



Release of PHI: Testimony in Court

- Called to testify
 - Subpoena
 - Voluntary
- Witness for whom?
 - Preparation
 - Responses
- “In Camera Review”



Release of PHI: In Defense of Professional

- Credibility of client
 - Support evidence of standard of care
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Duty to Protect: From Client-Caused Harm



- Breach of confidentiality required to protect
 - Varies by State
- Criteria
 - Special Relationship
 - Reasonable prediction of harmful conduct
 - Credibility of ideations
- Releasing Duty
 - Reasonable Care
 - Who do you tell?

Duty to Protect: From Self-Harm

- Tarasoff Case
- Breach of confidentiality required to protect
 - Varies by State
- Criteria
 - Special Relationship
 - Reasonable prediction of harmful conduct
 - Serious danger
 - Foreseeable victim
- Releasing Duty
 - Reasonable Care





Duty to Protect: **Mandated Reporting Laws**

- Child Maltreatment
 - Elder Abuse
 - “Vulnerable persons”
 - Obligations differ by state
 - Obligations differ by role
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Duty to Protect: Mandated Reporting Laws

- NOT ALL SUSPICIONS ARE REQUIRED TO BE REPORTED
 - Meet legal definitions
 - Burden of Proof: Reasonable
 - Negative impacts on professional relationships
 - Micro, mezzo and macro levels
 - #SupportNOTReport
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Protecting Yourself

- Preparation: Informed Consent
 - Minimize exposure to liability
 - Meet professional standards of care
 - Seek guidance/legal advice
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Case Studies & Practice Implications

Impact of Technology

- Emailing with Client
- Texting with Clients
- Social Media with Clients

Ewing v. Goldstein

- Adult client told father of intent to kill former partner's new partner
 - Father told therapist
- Therapist told father to have son hospitalized
- Inpatient psychiatrist discharged client over therapist's objection by telephone
- Client killed new partner and himself.
- Therapist sued by parents of new partner
- Was communication from client's father enough?

Minimizing Breach

- 8 year-old boy evaluated at his family's request due to school problems
 - Developmental and family history
 - Meeting with both parents
 - Assessing school progress reports
 - Administering cognitive and personality tests.
- Evaluation Outcome:
 - Mild perceptual learning disability
 - Difficulty coping with family stressors
 - Recommendation: Counseling
- Received Signed release from school
 - "Any" information available concerning concerns for child's emotional and educational needs

What should be shared?



Central Takeaways

Obligation to hold client confidences has limitations

Client right to autonomy

Professional responsibility to minimize breach



Conclusions/ Questions

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