



# VICARIOUS LIABILITY AND ETHICS IN HEALTHCARE

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# VICARIOUS LIABILITY AND ETHICS IN HEALTHCARE



## LEARNING OBJECTIVES



- Participants will be provided with an understanding and overview of common ethical principles
- Participants will define Vicarious Liability and will discuss the variety of ways that professionals and clinicians can be held accountable for Vicarious Liability or “imputed negligence”
- Participants will describe Interdisciplinary Team Collaboration as it relates to Ethics and Liability
- Potential Ethical Dilemmas which are common in a healthcare setting that arise from Vicarious Liability will be considered and options for managing the dilemma will be introduced
- Participants will examine strategies that will aide in the prevention of ethical violations and will determine how to address good, better, and best responses to common dilemmas



# What is an Ethical Code and Why is it Important?

Definitions



Para-professionals may not be bound by Ethical Codes

However, agencies, states, funders, and stake holders have standards and guidelines for all staff



“Professional Ethics are rules reflecting the values and goals of the profession.”

Source: Houston-Vega, Neuhring, & Daguio (2007)



A code of ethics is a guide of principles designed to help professionals conduct business honestly and with integrity



Source: Retrieved from Hayes (2020) at <https://www.investopedia.com/terms/c/code-of-ethics.asp>

A code of ethics document may outline the mission and values of the business or organization, how professionals are supposed to approach problems, the ethical principles based on the organization's core values, and the standards to which the professional is held.

Source: Retrieved from Hayes (2020) at <https://www.investopedia.com/terms/c/code-of-ethics.asp>



# ETHICAL STANDARDS

Professional organizations have their own standards, values, mission, and a unique code of ethics. Many have similarities. It is important to be familiar with ethics code for your profession, your agency, and your department.

“Some of the standards are enforceable guidelines for professional conduct, and some are aspirational.”

<https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>



## NASW ETHICAL STANDARDS

1. Social Workers' Ethical Responsibility to Clients
2. Social Workers' Ethical Responsibility to Colleagues
3. Social Workers' Ethical Responsibilities in Practice Settings
4. Social Workers' Ethical Responsibilities As Professionals
5. Social Workers' Ethical Responsibilities to the Social Work Profession
6. Social Workers' Ethical Responsibilities to the Broader Society

<https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>



NASW

National Association of Social Workers

SOCIAL WORKERS  
*generations*  
STRONG



# NASW VALUES

SERVICE

SOCIAL JUSTICE

DIGNITY AND WORTH OF  
THE PERSON

IMPORTANCE OF HUMAN  
RELATIONSHIPS

INTEGRITY

COMPETENCE



# NATIONAL BOARD FOR CERTIFIED COUNSELORS

The NBCC Code, “establishes the minimal ethical behaviors and provides an expectation of and assurance for the ethical practice for all who use the professional services of NCCs.”

Source: *NBCC Code of Ethics*, Approved October 7, 2016



# AMERICAN COUNSELING ASSOCIATION

*Your Passion. Your Profession. Our Purpose.*

The mission of the American Counseling Association is to enhance the quality of life in society by promoting the development of professional counselors, advancing the counseling profession, and using the profession and practice of counseling to promote respect for human dignity and diversity.

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The ACA Code of Ethics contains nine main sections that address the following areas:

Section A: The Counseling Relationship

Section B: Confidentiality and Privacy

Section C: Professional Responsibility

Section D: Relationships With Other Professionals

Section E: Evaluation, Assessment, and Interpretation

Section F: Supervision, Training, and Teaching

Section G: Research and Publication

Section H: Distance Counseling, Technology, and Social Media

Section I: Resolving Ethical Issues

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# AMERICAN PSYCHOLOGICAL ASSOCIATION

“This Ethics Code applies only to psychologists' activities that are part of their scientific, educational or professional roles as psychologists. Areas covered include but are not limited to the clinical, counseling and school practice of psychology; research; teaching; supervision of trainees; public service; policy development; social intervention; development of assessment instruments; conducting assessments; educational counseling; organizational consulting; forensic activities; program design and evaluation; and administration.”

- Source:<http://www.apa.org/ethics/code/index.aspx> (retrieved 4/19/2017)



# AMERICAN PSYCHOLOGICAL ASSOCIATION

- Standard 1: Resolving Ethical Issues
- Standard 2: Competence
- Standard 3: Human Relations
- Standard 4: Privacy and Confidentiality
- Standard 5: Advertising and Other Public Statements
- Standard 6: Record Keeping and Fees
- Standard 7: Education and Training
- Standard 8: Research and Publication
- Standard 9: Assessment
- Standard 10: Therapy

◦ Source:<http://www.apa.org/ethics/code/index.aspx> (retrieved 4/19/2017)





Source:

<https://www.nursingworld.org/coe-view-only>

- The American Nurses Association has a Code of Ethics for Nurses which includes 9 Provisions with categories under each of these.
- “It is a succinct statement of the ethical values, obligations, duties, and professional ideals of nurse individually and collectively.”
- “It is the profession’s non-negotiable ethical standard.”
- “It is an expression of nursing’s own understanding of its commitment to society.”



# MISSOURI CREDENTIALING BOARD

The Missouri Credentialing Board (MCB) certifies Substance Use Disorders and Related Professionals in Missouri. They have several Code of Ethics that are pertinent to the credential obtained. According to the MCB, “All professionals credentialed by MCB are expected to thoroughly familiarize themselves with the Code of Ethical Practice and Professional Conduct”. The following are the Code of Ethics Principals:

- Responsibility to Clients
- Counseling Relationship
- Legal and Moral Standards
- Diversity
- Professional Competence and Integrity
- Compliance with the Law
- Cooperation with the Board

Source: <https://missouricb.com/ethics/#Treatment>

# THREE C'S FOR BEING ETHICAL

1. Compliant- with regulations, guidelines, and standards.
2. Cooperative- with agencies, the profession, clients, and colleagues
3. Covered- to protect the general public/public welfare, to protect clients, and to protect oneself from litigation



# ETHICAL DILEMMAS, VIOLATIONS, AND RISKS

Definitions

# ETHICAL DILEMMAS

An ethical dilemma is experienced when a professional cannot adhere to their professional values or when adhering to one ethic requires behaving counter to another.”

Source: Proctor; Morrow-Howell; & Lott (1993), p. 166



# ETHICAL DILEMMAS

“Difficult ethical dilemmas or tensions, often not explicitly addressed in professional codes of ethics, emerge as practitioners attempt to work with “vulnerable” populations (NIAAA, 2005; Spano and Koenig, 2003).”



# ETHICAL VIOLATIONS



An Ethical Violation is when there is a definite violation in an Ethics Code or Standard

There may be consequences

It is different from a dilemma in which a conflict is experienced in adhering to a professional value.

# Ethical Dilemmas and Organizations

Informal Approaches to gaining power or other advantages are termed as Agency Politics

*Source: Kirst-Ashman (2012)*



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# Ethical Dilemmas and Organizations

Dynamics Contributing to Political Behavior in Agencies

- Competition and Power
- Scarce Resources (intensifies need for power)
- Uncertainty
- Power-oriented workers, supervisors, or managers

Source: *Kirst-Ashman (2012)*



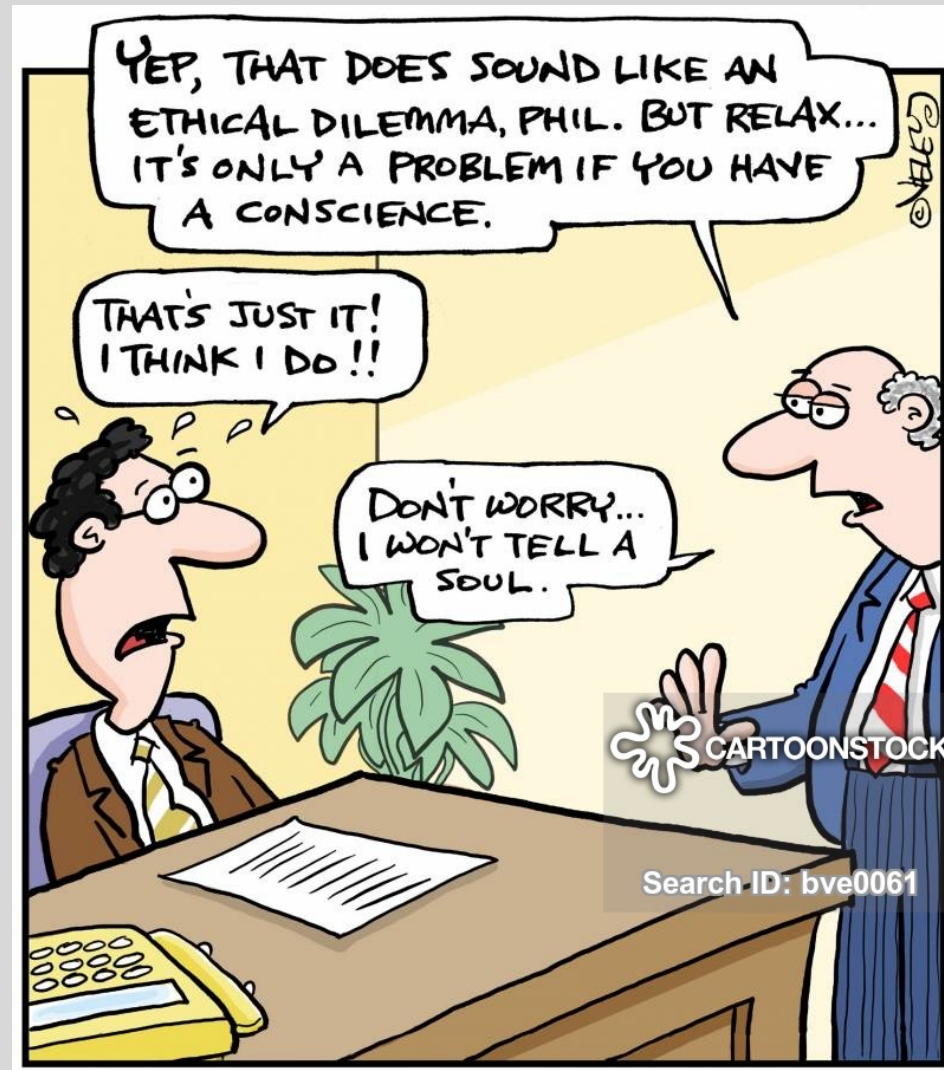
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# Motivations for Unethical Behavior

Dr. Kaptein's Study on motivations for unethical Behavior (as cited by Bradberry, 2016)- mind tricks to be aware of.

- The compensation effect
- The power of names
- Cognitive Dissonance
- Broken Window Theory
- Tunnel Vision
- The Pygmalion effect
- Pressure to conform
- Obedience to Authority
- Winner-take-all competition
- Social Bond Theory
- The Binding Effect of power
- Conspicuous Consumption
- Acceptance of small theft
- Reactance Theory

# Motivations for Unethical Behavior





# ETHICS AND VICARIOUS LIABILITY

# Vicarious Liability

Legal concept:  
*respondeat superior*  
which means: “let the superior reply”. This doctrine is also known as “vicarious liability”.

Source: Reamer (1998)

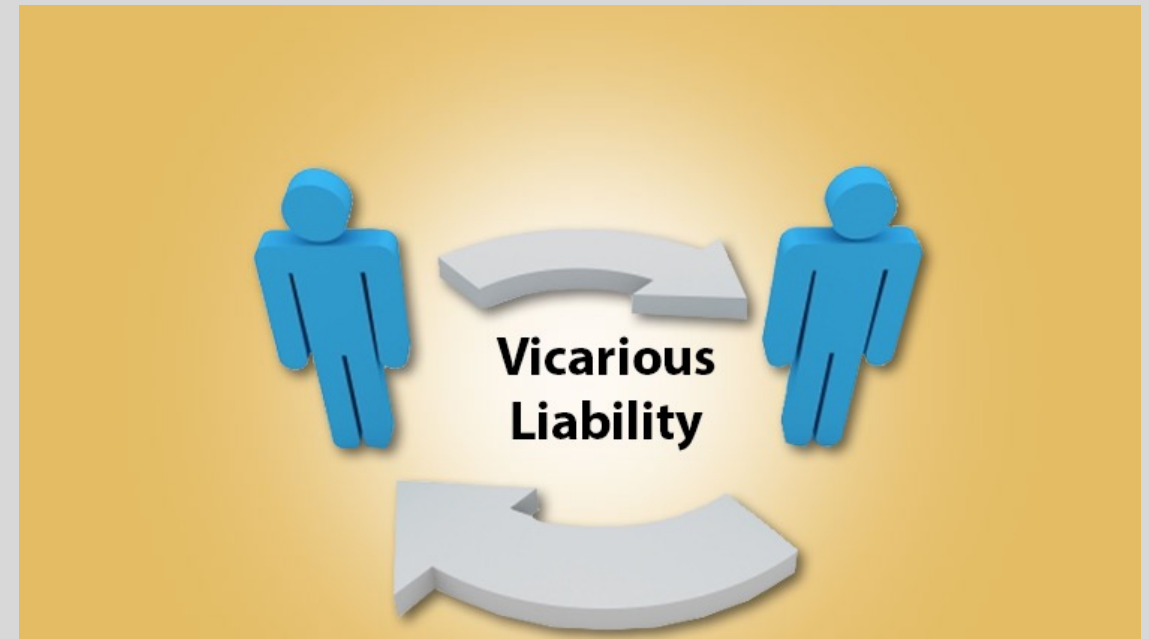


# Vicarious Liability

“Imputed Negligence” or “doctrine of respondeat superior”

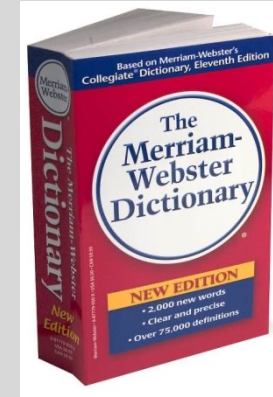
“...anyone can be held accountable for the malfeasance, misfeasance, or nonfeasance of subordinates and assistants, supervisees, or colleagues

Source: Reamer (1998)



# Vicarious Liability

The Legal Concepts that relate to Vicarious Liability:



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Malfeasance- “illegal or dishonest activity especially by a public official or a corporation”

Misfeasance- “the performance of a lawful action in an illegal or improper manner”

Nonfeasance- “failure to act; *especially*: failure to do what ought to be done”

Definitions retrieved from: <http://www.merriam-webster.com/dictionary> on 4-01-2016

# Vicarious Liability and Employees

What kinds of employee conduct affect an employer?

When the conduct of an employee results in harm to a client in the course of doing his or her job

Source:

<http://medthreeinsurance.com/uploads/risk-bulletins/Healthcare-Risk-Management-Bulletin-Volume-2-Part-1-Vicarious-Liability2.pdf>





# Vicarious Liability and Colleagues

Poll: Which responsibility do you most often have dilemmas with in regard to colleagues?

- Sexual Relationships
- Sexual Harassment
- Impaired Colleagues
- Incompetence of Colleagues
- Unethical Conduct of Colleagues



“Social workers should take adequate measures to discourage, prevent, expose, and correct the unethical conduct of colleagues.”

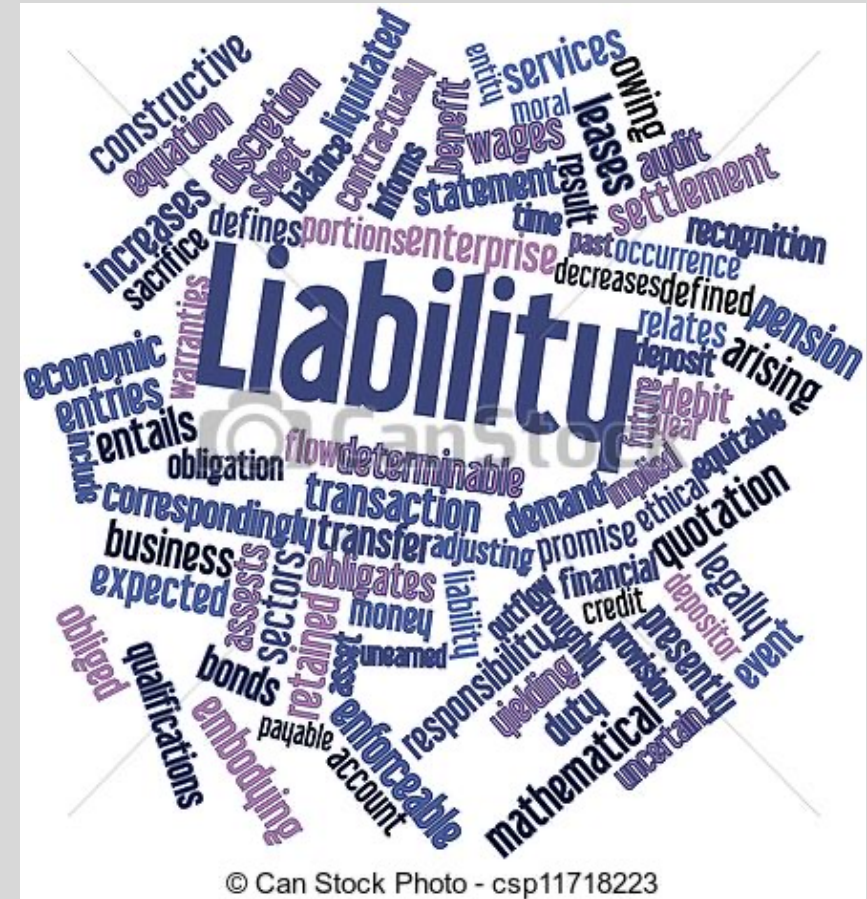
Source: <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>

# Vicarious Liability and Colleagues

Inappropriate practices by colleagues:

- undertaking procedures for which the clinician is not qualified or credentialed
- violating hospital or practice policy or procedures
- causing problems for patients or others

Source: [https://mdedge-files-live.s3.us-east-2.amazonaws.com/files/s3fs-public/issues/articles/OBGM\\_0115\\_WhatsVerdict.pdf](https://mdedge-files-live.s3.us-east-2.amazonaws.com/files/s3fs-public/issues/articles/OBGM_0115_WhatsVerdict.pdf)



# ETHICAL DILEMMAS



Polling Question:

Which is the **most common** ethical dilemma you have experienced in your setting in regard to inappropriate practices by colleagues?

# Vicarious Liability and Colleagues

## INTERDISCIPLINARY TEAMS

“practice by two, or more practitioners from two or more fields of learning and activity, who fill distinct roles, perform specialized tasks, and work in an interdependent relationship toward achievement of a common purpose.”

Source: Carlton (1984)



# Vicarious Liability and Colleagues

## INTERDISCIPLINARY TEAMS- Common Settings

- Schools
- Medical & Psychiatric Hospitals
- Nursing Homes
- Rehabilitation Facilities
- Community Mental Health Centers
- Family Services Agencies
- Substance Abuse Treatment Programs
- Correction Programs
- The Military



Source: Reamer (2004); *Ethical Standards in Social Work: A Review of the NASW Code of Ethics*, NASW Press: USA

# Vicarious Liability and Colleagues

## INTERDISCIPLINARY TEAMS



“...pooling interdisciplinary expertise yields a better understanding of client needs and resources while enhancing the range of options considered and skills applied in problem solving.”

Abramson & Mizrahi (1996)

# Vicarious Liability and Colleagues



## INTERDISCIPLINARY TEAMS

“directly benefits collaborators”

“Individuals expand knowledge and expertise through exposure to other professionals.”

Abramson & Mizrahi (1996)



# Vicarious Liability and Colleagues

## INTERDISCIPLINARY TEAMS



- Opportunity to share expertise from diverse perspectives
- Can be stressful
- Members of one profession may not fully appreciate the value & perspective of the other
- Others may feel threatened by their colleagues and other professions
- Social Workers may, at times, bring a “unique perspective”
- Often times view of different professionals may be similar

# Vicarious Liability and Colleagues

## INTERDISCIPLINARY TEAMS

Literature Review by Abramson & Mizrahi (1996):

- Most literature has a negative emphasis
- Tensions occur due to Role Competition, Role Confusion, Turf Issues, and Role Definition
- Conflict arises from differences in the professional socialization processes
- There are issues around Physician-dominated teams and interprofessional decision making

# Vicarious Liability and Colleagues

## INTERDISCIPLINARY TEAMS

Model for Interdisciplinary Collaboration  
(Bronstein, 2003)

### COMPONENTS:

1. Interdependence
2. Newly Created Professional Activities
3. Flexibility
4. Collective Ownership of Goals
5. Reflection on Process



# Vicarious Liability and Colleagues

- What “checks and balances” do you have regarding colleagues’ behavior in your practice?
- Courts have been increasingly insistent that an institution may be liable when its physicians or nurses witness inappropriate medical practice but fail to take action to protect patients. What about your setting and the colleagues you work with?

Source: [https://mdedge-files-live.s3.us-east-2.amazonaws.com/files/s3fs-public/issues/articles/OBGM\\_0115\\_WhatsVerdict.pdf](https://mdedge-files-live.s3.us-east-2.amazonaws.com/files/s3fs-public/issues/articles/OBGM_0115_WhatsVerdict.pdf) (Retrieved 4/5/2019)

# Vicarious Liability for Supervisors

“Supervisors must be cognizant not only of their employees’ ethical decisions but also of their own ethical behavior.”

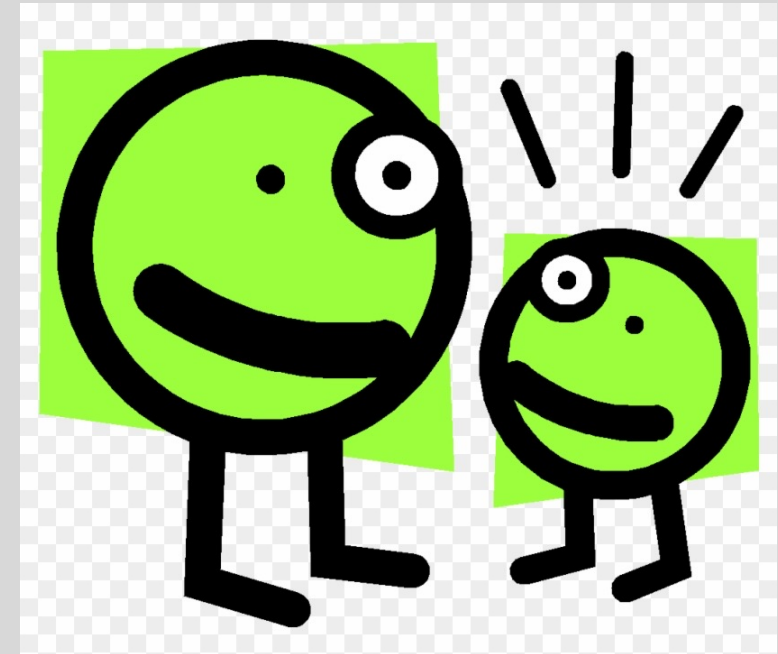


Source: Dewane, C. (2007)

# Vicarious Liability for Supervisors

## Legal Theories for Indirect and Direct Liability

- Damages caused by the subordinate
- Borrowed Servant Rule- who had control over the student
- Enterprise Liability- “The cost of doing business”
- Educational Malpractice- not generally recognized by courts, however, students must meet standards of professionals
- Negligent Hiring
- Negligent Supervision



Administration in Social Work, Vol. 27(2) 2003  
<http://www.haworthpress.com/store/product.asp?sku=J147>

# Vicarious Liability for Supervisors

## Dangers of Supervision

Dual relationships  
Documentation  
Descriptions  
(position)  
Duty to Warn  
Dilemmas  
Disciplinary Action  
Discretion

Source: Dewane, C. (2007)



# Vicarious Liability Risks

The following heighten vulnerability:

- Employing or supervising paraprofessionals
- Independently contracting to supervise social workers (or licensees) preparing for licensure
- Supervising professional coworkers
- Supervising student interns
- Arranging internships and field placements
- Serving as a case consultant

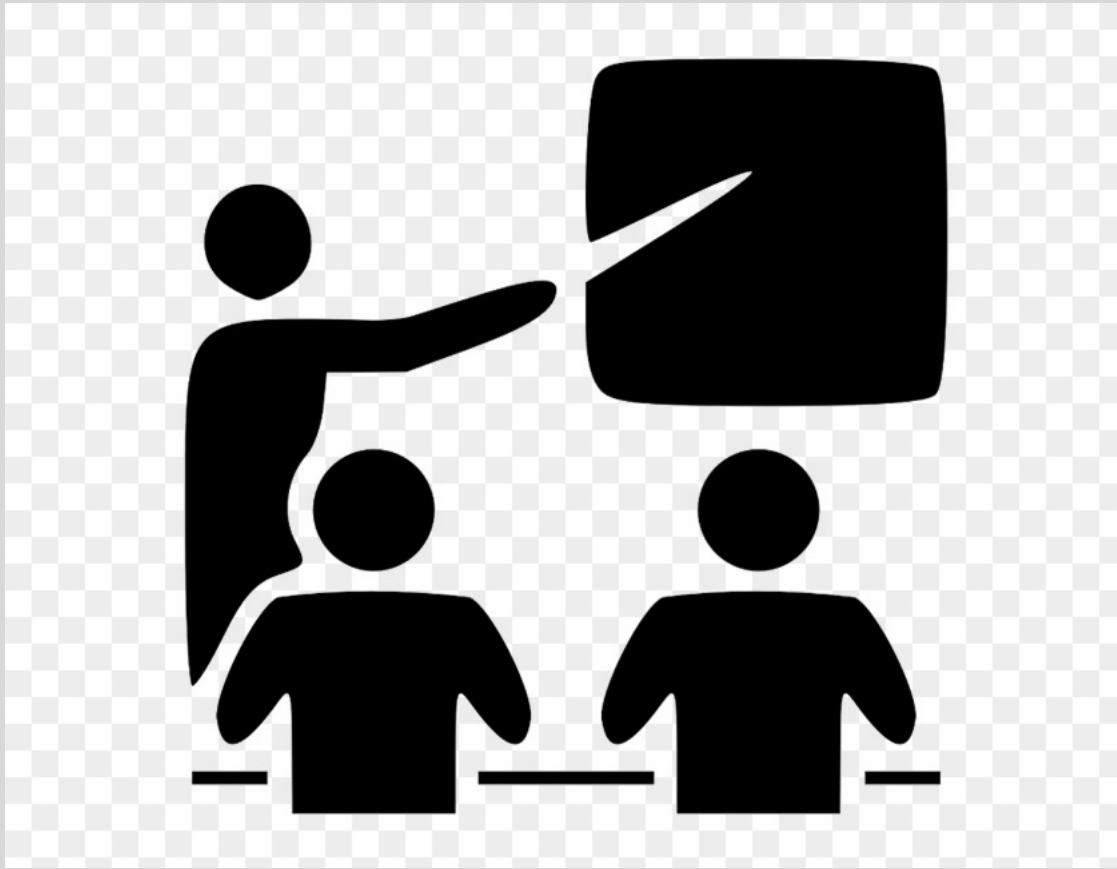
Source: Houston-Vega; Nuehring; & Daguio (1997)





# Vicarious Liability Risks

The following heighten vulnerability:



- Teaching or Training
- Referring clients to other professionals
- Serving on Boards of Directors
- Serving in an executive or administrative capacity in an agency group practice
- Affiliating with others in a group practice
- Associating with impaired colleagues

Source: Houston-Vega; Nuehring; & Daguio (1997)



# PREVENTION AND TIPS FOR MANAGING ETHICAL DILEMMAS

# MANAGING ETHICAL DILEMMAS

- What helps you in making ethical decisions?
- What resources are available?
- Who can I consult with?
- How do you manage conflict in an ethical way?
- Can you be held liable?

YouTube Video you may wish to view:

<https://www.youtube.com/watch?v=B5p3OZCGPrA>

# MANAGING ETHICAL DILEMMAS

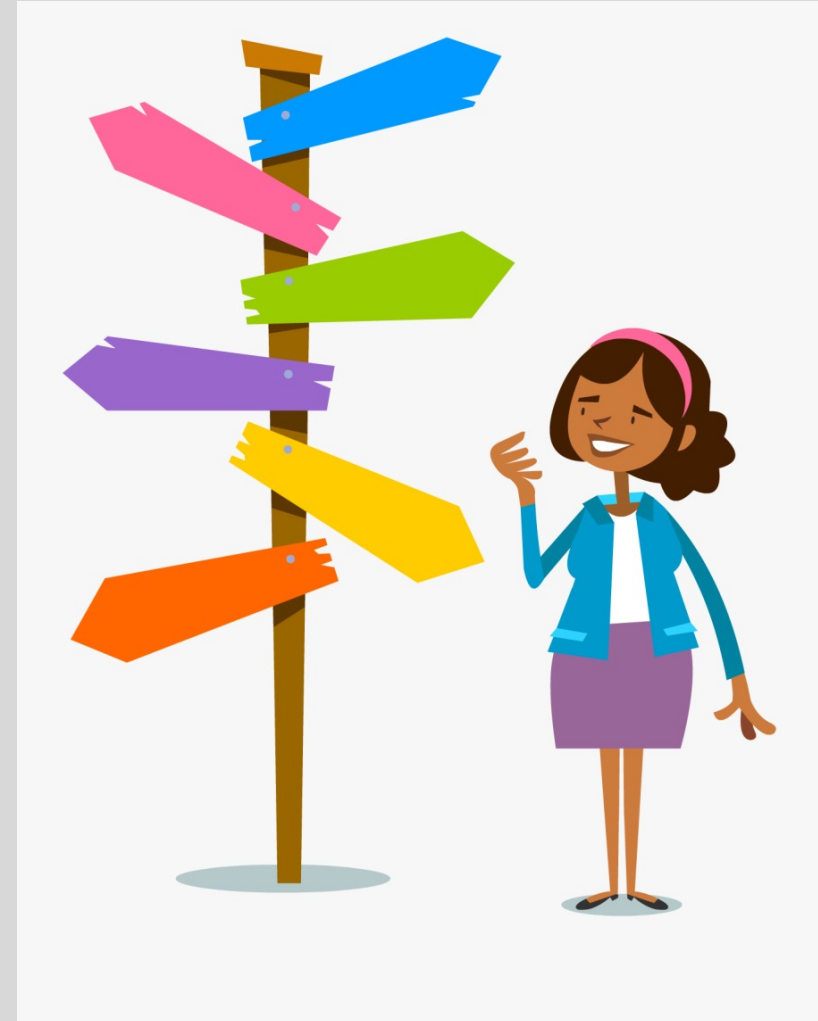
What is best practices when a professional has more than one ethics code that they are required to adhere to?

▪

# MANAGING ETHICAL DILEMMAS DECISIONS APPROACH

- D** - Determine Facts
- E** - Ethical Considerations, what standards apply?
- C** - Consider Impact of Values
  - I** - Impact of Self on the Decision
- S** - Stakeholders, who are they
  - I** - Incorporate Professional Literature Review
- O** - Other Considerations
- N** - Narration of your Decision
- S** - Secure and Support your Decision

Source: Hobody (2016)



# TIPS FOR MANAGING ETHICAL DILEMMAS IN SUPERVISION

Have a written agreement with supervisees

Document supervisory sessions

Have the proper qualifications to supervise

Supervise with “an eye toward ethics—including referring frequently in supervision to the *NASW Code of Ethics*”

Ensure that services provided by supervisees are above minimal

Obtain consultation

Assure supervisee’s clients have released information for supervision

Treat supervisee with respect

Source: Houston-Vega; Nuehring; & Daguio (1997)

# TIPS FOR MANAGING ETHICAL DILEMMAS FOR ADMINISTRATORS

Administrators should:

- Work with supervisors to define and document legal and ethical standards for the agency, in writing
- Train all personnel, consistently and continually in the agency's legal and ethical standards, and also in changing case law and legislation affecting clinical practice

*Source: Substance Abuse and Mental Health Services Administration (SAMHSA) (2009)*



# TIPS FOR MANAGING ETHICAL DILEMMAS FOR ADMINISTRATORS

Administrators should:

- Reinforce support for supervisors who face situations in which legal and ethical issues may arise
- Help supervisors develop a process for ethical decision making as supervisors
- Help supervisors develop a process for teaching ethical decision making to counselors



*Source: Substance Abuse and Mental Health Services Administration (SAMHSA) (2009)*



# MANAGING ETHICAL DILEMMAS IN AGENCIES ("AGENCY POLITICS")

Tactics to avoid when dealing with agency politics:

- "Backstabbing"
- Don't set up a person for failure
- Don't exclude the opposition
- Don't go over your supervisor's head without first exhausting all options
- Don't throw temper tantrums



Source: Kirst-Ashman (2012)

# MANAGING ETHICAL DILEMMAS IN AGENCIES ("AGENCY POLITICS")



Reminder: Professionals should incorporate social justice in the organizations in which they work, just as they would for clients (Kirst-Ashman, 2012)

## MANAGING ETHICAL DILEMMAS

“In some cases an apology may be in order when things go wrong with patient care—and sometimes it can help defuse the tensions that arise when a bad outcome happens.”

Source: [https://mdedge-files-live.s3.us-east-2.amazonaws.com/files/s3fs-public/issues/articles/OBGM\\_0115\\_WhatsVerdict.pdf](https://mdedge-files-live.s3.us-east-2.amazonaws.com/files/s3fs-public/issues/articles/OBGM_0115_WhatsVerdict.pdf) (retrieved 4/5/2019)

## MANAGING ETHICAL DILEMMAS

Reminder: Don't forget to have a trauma-informed care and culturally competent approach with clients, colleagues, supervisees, and supervisors. This will prevent some (not all) ethical dilemmas.



## MANAGING ETHICAL DILEMMAS



Trauma-Informed Care includes self-care. If we aren't caring for ourselves, there is a greater chance that we aren't managing ethical dilemmas appropriately.

# MANAGING ETHICAL DILEMMAS



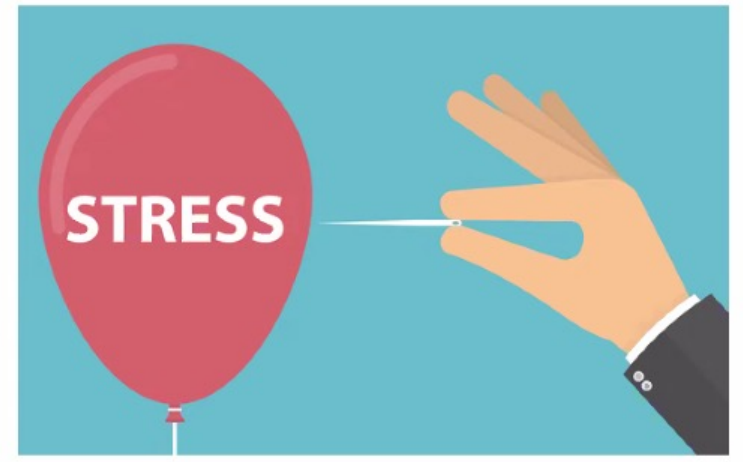
Most Effective Self-Care for Me is:

- Mindfulness and Relaxation
- Physical Activity
- Being served through a massage, facial, eating out, etc
- Travel or Time Off



# 16 Simple Ways to Relieve Stress and Anxiety

- |                 |                                |                                    |                             |
|-----------------|--------------------------------|------------------------------------|-----------------------------|
| Exercise        | Consider supplements           | Light a candle                     | Reduce your caffeine intake |
| Write it down   | Chew gum                       | Spend time with friends and family | Laugh                       |
| Learn to say no | Learn to avoid procrastination | Take a yoga class                  | Practice mindfulness        |
| Cuddle          | Listen to soothing music       | Deep breathing                     | Spend time with your pet    |





# CONCLUSION AND WRAP UP

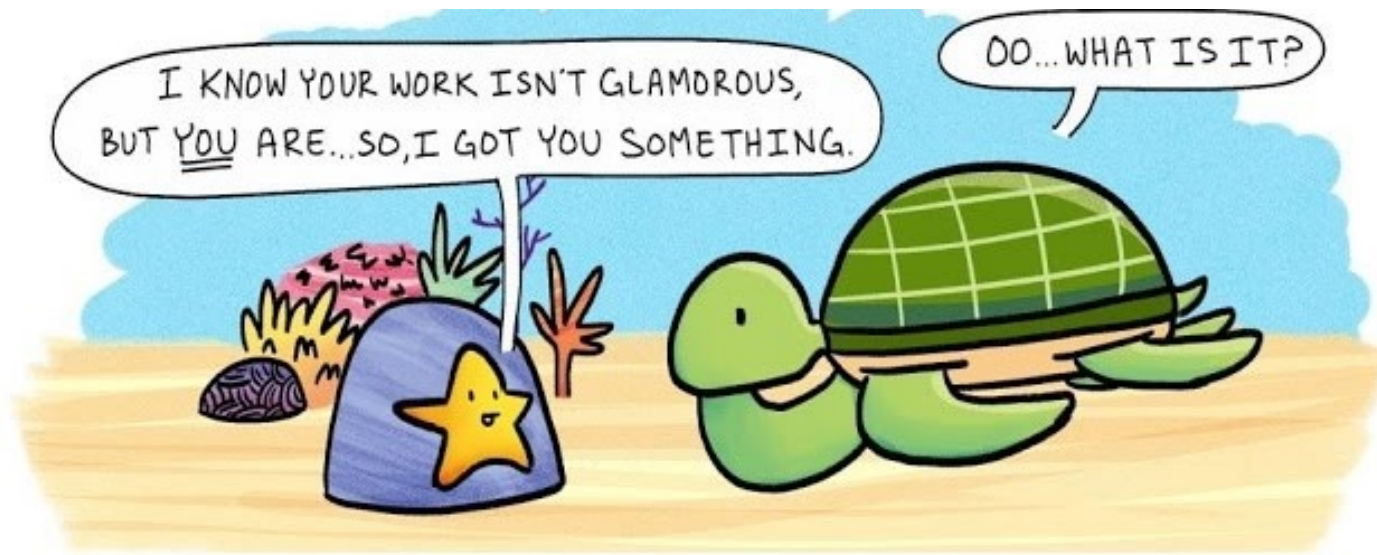


# MANAGING ETHICAL DILEMMAS

Concluding Reminder from SAMHSA regarding Professional and Ethical Responsibilities:

“Adhere to established professional codes of ethics that define the professional context within which the counselor works to maintain professional standards and safeguard the client.”

Source: Substance Abuse and Mental Health Services Administration (SAMHSA) (2014). *TAP 21 Addiction Counseling Competencies: The Knowledge, Skills, and Attitudes of Professional Practice*, Rockville, MD



You deserve the best

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