



Behavioral Health Ethics for Private Practice

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Behavioral Health Ethics for Private Practice



LEARNING OBJECTIVES:



Participants will be provided with an understanding and overview of common ethical principles related to behavioral health practice



Participants will discuss trends and the current research regarding ethical complaints in counseling practice and behavioral health with a focus on professionals in private practice



Participants will examine strategies and best practices for managing complaints and ethical dilemmas in practice.



What is an Ethical Code
and Why is it important?



What is an Ethical Code and Why is it important?

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

What is an Ethical Code and Why is it important?

- Various Professions have Unique Ethical Codes
- Ethical Codes have similarities
- In addition to a Code of Ethics, states have licensing regulations that are mandates
- Agencies have Ethics Codes based on Agency Mission



ETHICAL CODES AND PARA- PROFESSIONALS

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) *Prudent Practice: A Guide For Managing Malpractice Risk*. NASW- National Association of Social Workers: Washington, DC



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



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- Compliant- with regulations, guidelines, and standards.
- Cooperative- with agencies, the profession, clients, and colleagues
- Covered- to protect the general public/public welfare, to protect clients, and to protect oneself from litigation
- Client-centered- the most important reason for being ethical is our clients and avoiding harm



ETHICAL STANDARDS

“The NASW Code of Ethics is intended to serve as a guide to the everyday professional conduct of social workers.”

“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>



The National Board of Certified Counselors (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.” “NCCs recognize that their behavior reflects on the integrity of the profession as a whole, and thus, they avoid actions which can reasonably be expected to damage trust” and “NCC’s are accountable in their actions and adhere to recognized professional standards and practices.”

Source: National Certified Counselors (NCCs) Directives (2016)





“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: American Psychological Association (APA) Ethics Code (2017):

Commonly shared ethical principles include:

- **Autonomy:** Respecting a client's decision to participate (or not) in treatment and the opportunity to change and to address their own needs
- **Beneficence:** Striving to help others and promote their well-being
- **Justice:** Treating others in a fair and equitable manner; refraining from discriminatory practices
- **Honesty:** Being direct and truthful in all interactions with clients, colleagues, business associates, and the community
- **Integrity:** Striving to be accurate, honest, and truthful with individuals with whom you come into professional contact
- **Fidelity:** Fulfilling one's responsibilities, honoring commitments, and keeping promises you make to others
- **Nonmaleficence:** Striving to avoid harming your client in any way

Source: Relias LLC (2020)

The background features a dark, textured surface covered with numerous 3D question marks. On the left side, there is a vertical green gradient bar. On the right side, there are several overlapping, semi-transparent green geometric shapes, including triangles and polygons, creating a layered effect. The overall color palette is dominated by dark greys, blacks, and various shades of green.

ETHICAL DILEMMAS



An ethical dilemma is experienced when a professional cannot adhere to 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 DILEMMA EXAMPLES

Ethical Dilemmas in hospitals may mirror some of the dilemmas we experience. Most dilemmas were found to involve the following:

- ▶ Conflicts in the Client's Right to Self-Determination & Client best interest
- ▶ Dilemmas were more likely to occur when the client's mental status was impaired & the client had problems making decisions
- ▶ Delayed Discharges
- ▶ In-patient Hospital Mortality
- ▶ Inadequate Post-Discharge Care

Source: Proctor, Morrow-Howell, & Lott (1993)

Ethical dilemmas and professional boundaries

The background features abstract, overlapping green geometric shapes in various shades of green, creating a modern and dynamic feel. The shapes are primarily triangular and polygonal, with some areas appearing more translucent than others.

Trends in Ethical Complaints Against Practitioners

The Research

ETHICS AND BOUNDARIES

“ethical issues related to professional boundaries are among the most problematic and challenging (Congress, 1996; Jayaratne, Croxton, & Mattison, 1997; Kagle & Giebelhausen, 1994; Strom-Gottfried, 1999). Briefly, boundary issues involve circumstances in which practitioners encounter actual or potential conflicts between their professional duties and their social, sexual, religious, or business relationships.”

Source: Reamer (2003), *Issues in Social Work: Managing Dual Relationships*, Social Work / Volume 48, Number 1 / January 2003

ETHICS AND BOUNDARIES

“Boundary issues in social work can be placed into five conceptual categories revolving around five central themes pertaining to social workers: (1) intimate relationships, (2) pursuit of personal benefit, (3) emotional and dependency needs, (4) altruistic gestures, and (5) responses to unanticipated circumstances”

Source: Reamer (2003), *Issues in Social Work: Managing Dual Relationships*, Social Work / Volume 48, Number 1 / January 2003

BOUNDARY ISSUES

- Intimate relationships: sexual relationship, physical contact, services to former lover, intimate gestures
- Personal benefit: monetary gain, goods and services, useful information
- Emotional and dependency needs: extending relationships with clients, promoting client dependence, confusing personal and professional lives, reversing roles with clients
- Altruistic gestures: performing favors, providing nonprofessional services, giving gifts, being extraordinarily available
- Unanticipated circumstances: social and community events, joint affiliations and memberships, mutual acquaintances and friend

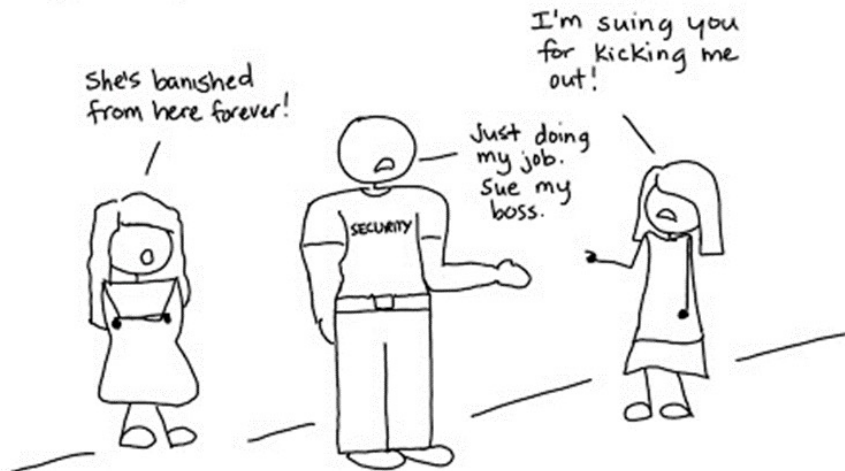
Source: Reamer (2003), *Issues in Social Work: Managing Dual Relationships*, Social Work / Volume 48, Number 1 / January 2003



VICARIOUS LIABILITY

Today in Legal Latin

Respondeat Superior



Latin for "Let the master answer" - The legal doctrine that ascribes responsibility to a party for the acts of others. This is known as vicarious liability.

ETHICS AND VICARIOUS LIABILITY

WHAT IS 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.” (Houston-Vega; Nuehring; & Daguio, 1997)

Vicarious Liability

The Legal Concepts that relate to Vicarious Liability:

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

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> (retrieved 4/5/2019)

VICARIOUS LIABILITY ISSUES, EMPLOYERS, AND ETHICS

Vicarious Liability and Colleagues

INTERDISCIPLINARY TEAMS

Interdisciplinary Teamwork is defined by Carlton (1984) as: “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.” (p.129)

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 & Rosenthal, 1995; Brunner, 1991)”

“directly benefits collaborators”

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

Abramson & Mizrahi (1996)

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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

Reamer (2004)

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 (Retrieved 4/5/2019)

Vicarious Liability and Colleagues

Inappropriate practices by colleagues include:

- ▶ 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
(retrieved 4/5/2019)

VICARIOUS LIABILITY AND ETHICS- INAPPROPRIATE PRACTICES BY COLLEAGUES AND SUPERVISEES

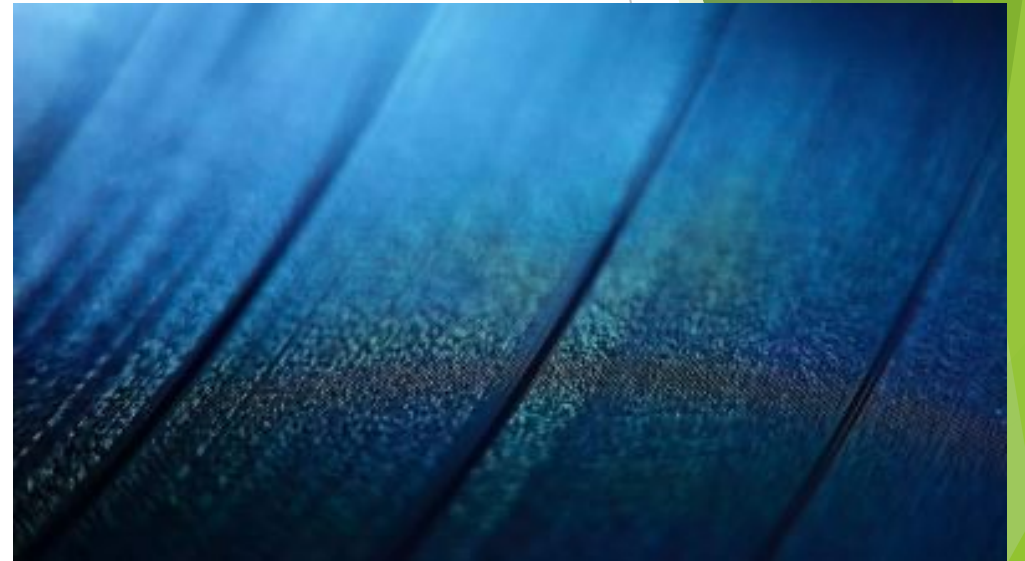
What is the **most common** ethical dilemma you have experienced in your setting regarding inappropriate practices by colleagues or supervisees?

1. Undertaking procedures for which the staff person is not qualified or credentialed
2. Violating hospital or practice policy or procedures
3. Causing problems for patients or others



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

Source: Dewane, C. (2007) Supervisor Beware: Ethical Dangers in Supervision. Social Work Today, 7 (4), p. 34



Most Common Ethical Conflicts

According to Dewane (2007), these are the “D”angers of Supervision:

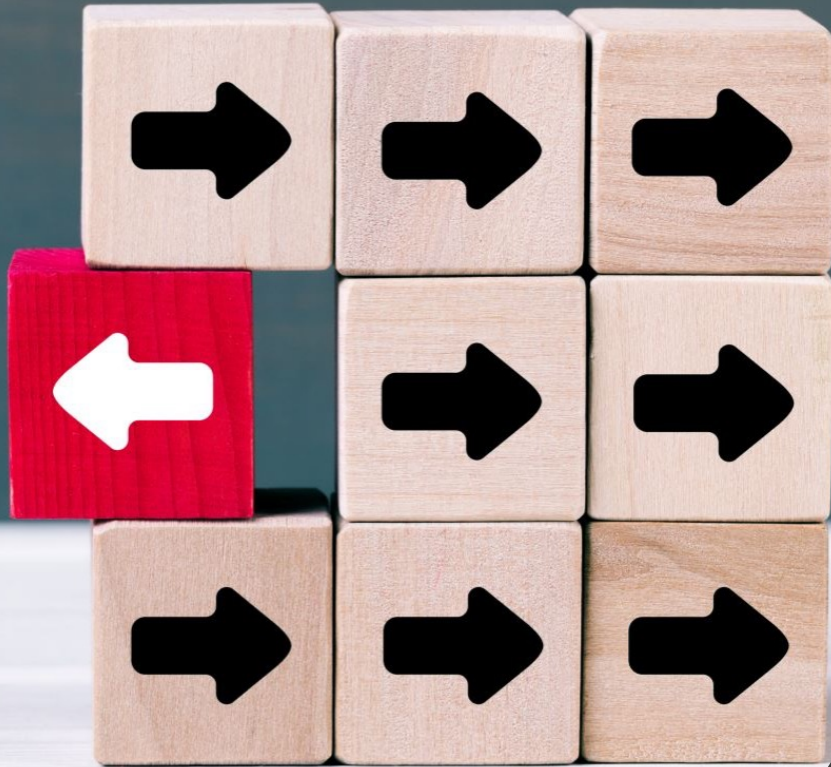
- Dual relationships
- Documentation
- Descriptions (position)
- Duty to Warn
- Dilemmas
- Disciplinary Action
- Discretion

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 in an agency setting
- Supervising student interns
- Arranging internships and field placements
- Serving as a case consultant
- ▶ 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

Ethical Decision Making

What helps you in making ethical decisions?

What resources are available?

How do you manage conflict in an ethical way with a colleague, supervisee, or supervisor?

What do you do if you feel your colleague, supervisee, or supervisor is making an unethical decision and they will not listen to your view-point?

Are you liable?

<https://www.youtube.com/watch?v=B5p30ZCGPrA>

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MANAGING ETHICAL DILEMMAS IN AGENCIES ("AGENCY POLITICS")

These tactics should be avoided 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

Reminder: Professionals should incorporate social justice in the organizations in which they work, just as they would for clients

Source: Kirst-Ashman (2012)

MANAGING VICARIOUS LIABILITY ISSUES AS A SUPERVISOR

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

Source: Dewane, C. (2007)
Supervisor Beware: Ethical Dangers in Supervision. Social Work Today, 7
(4), p. 34



free from
 **HARM**

- ▶ should focus on supervision and the supervisory and avoid psychotherapy with
- ▶ and see each individual with more than adapt to needs while consistent to all
- ▶ ons are:
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 - ▶ Safety
 - ▶ Practice

Association of
NASW) (2013),
ervision, p.19-22

Ethical Decision Making

TIPS TO SAFEGUARD VICARIOUS LIABILITY 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)





Legal And Ethical Issues 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
- ▶ 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); Quick Guide for Administrators Based on Tip 52: Clinical Supervision and Professional Development of the Substance Abuse Counselor, p. 12



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MANAGING VICARIOUS LIABILITY AND ETHICAL ISSUES WITH COLLEAGUES



- ▶ What “checks and balances” do you have regarding colleagues’ behavior in your practice or work-place?
- ▶ 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 (Retrieved 4/5/2019)



WHAT CHECKS AND BALANCES DO YOU HAVE REGARDING A COLLEAGUE'S BEHAVIOR?

What checks and balances do you have regarding a colleague's behavior? What is your go-to for addressing inappropriate behavior?

- a. Confronting the behavior and asking for change
- b. Emailing the colleague- Documenting, Documenting, Documenting
- c. Submitting an incident report to Supervisor, HR, Compliance, or the appropriate in-agency staff
- d. All of the Above

MANAGING ETHICAL DILEMMAS AND VICARIOUS LIABILITY WITH CLIENTS



- ▶ “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
(retrieved 4/5/2019)

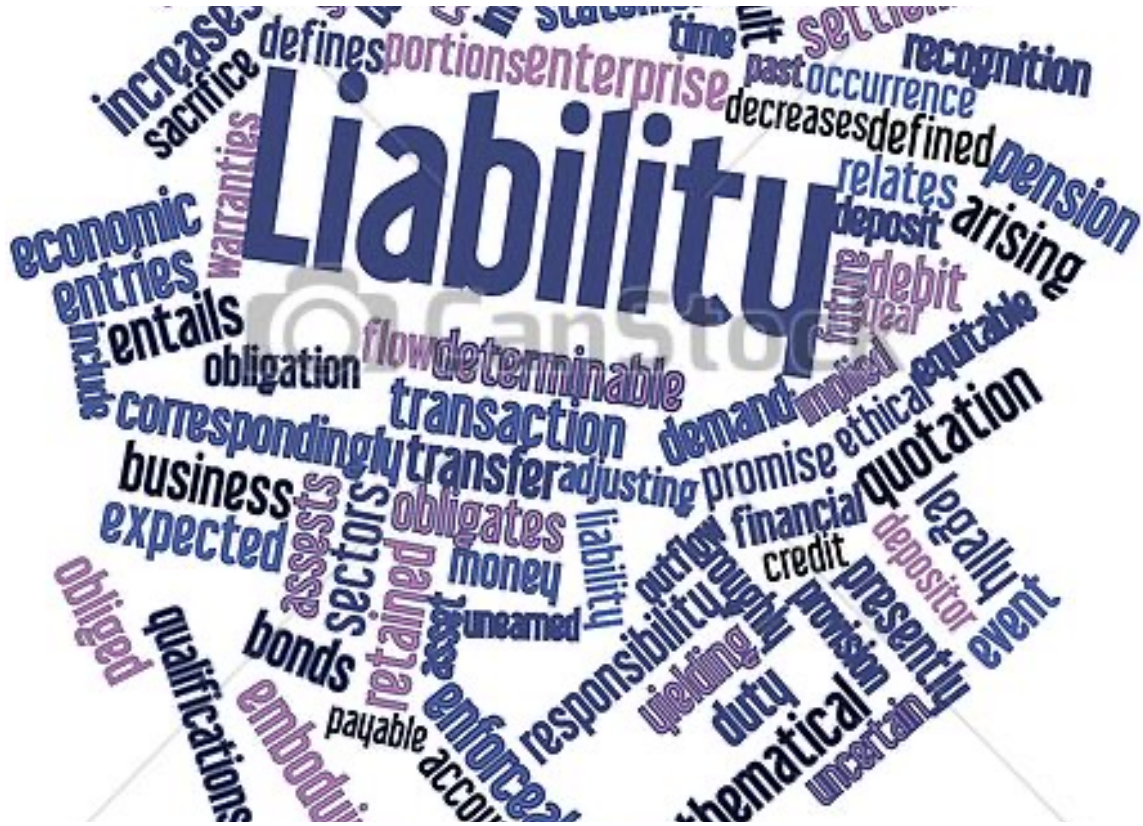
LEGAL AND ETHICAL CONSIDERATIONS IN TELEHEALTH

- ▶ Licensure- state licensing boards are concerned where the patient is located. If you are speaking to someone in another state, you need a license.
- ▶ Technology- many practitioners use it without training, competence, & research evidence

Source: Coyle, S.(2018); *The Continued Growth of Telemental Health; Social Work Today; Vol. 18. No. 2 P. 18.*



TIPS FOR PREVENTING ETHICAL DILEMMAS & VIOLATIONS IN TELEHEALTH



“When using technology to provide services, practitioner competence and the well-being of the client remain primary.”

Keeping this in mind will help prevent ethical dilemmas and violations.

Source: National Association of Social Workers; Association of Social Work Boards Council on Social Work Education; Clinical Social Work Association (2017), NASW, ASWB, CSWE, & CSW Standards for Technology in Social Work Practice.



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

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.



TIPS FOR PREVENTING ETHICAL DILEMMAS & VIOLATIONS

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.

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

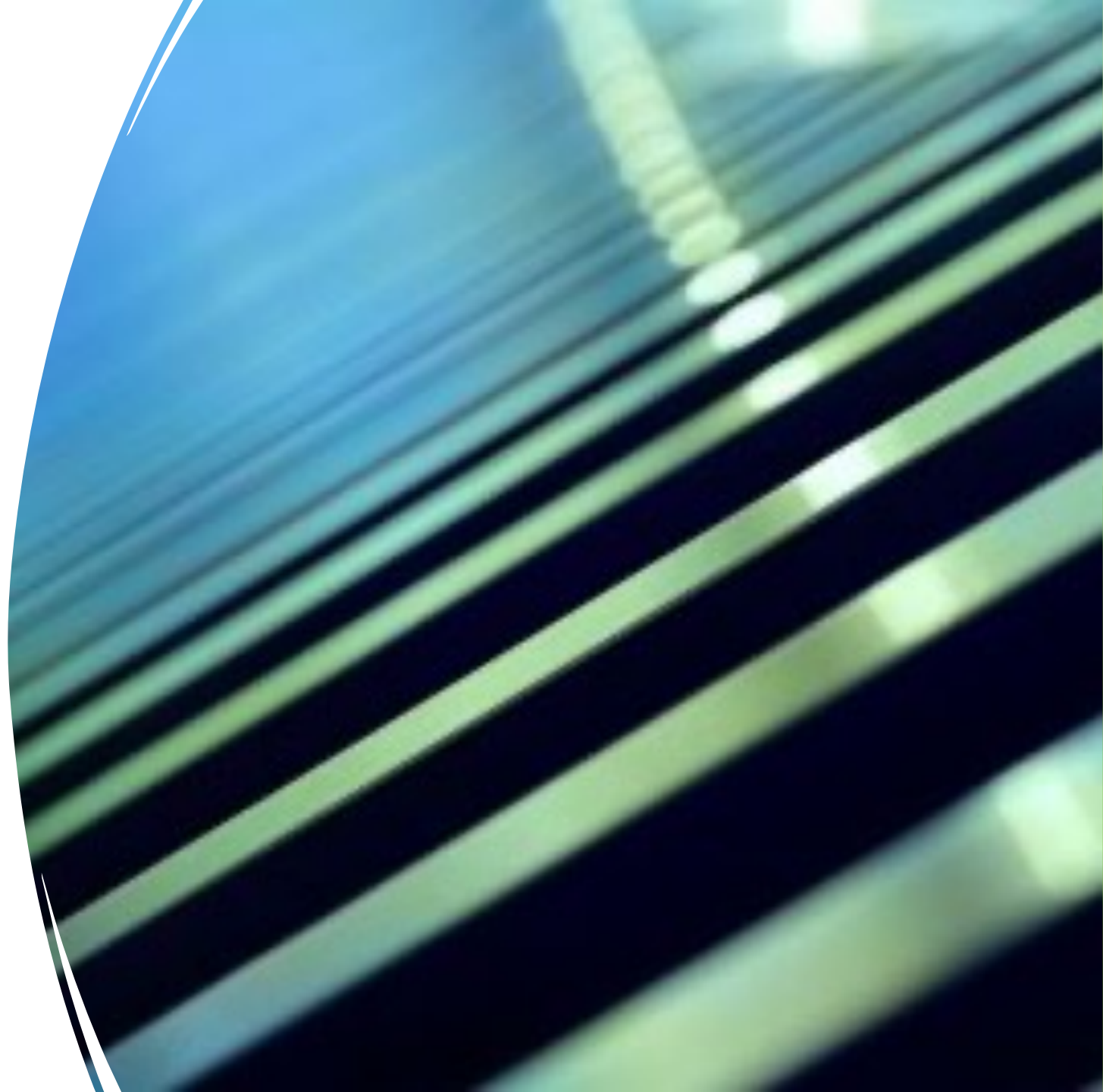


Ethical Decision Making

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.”

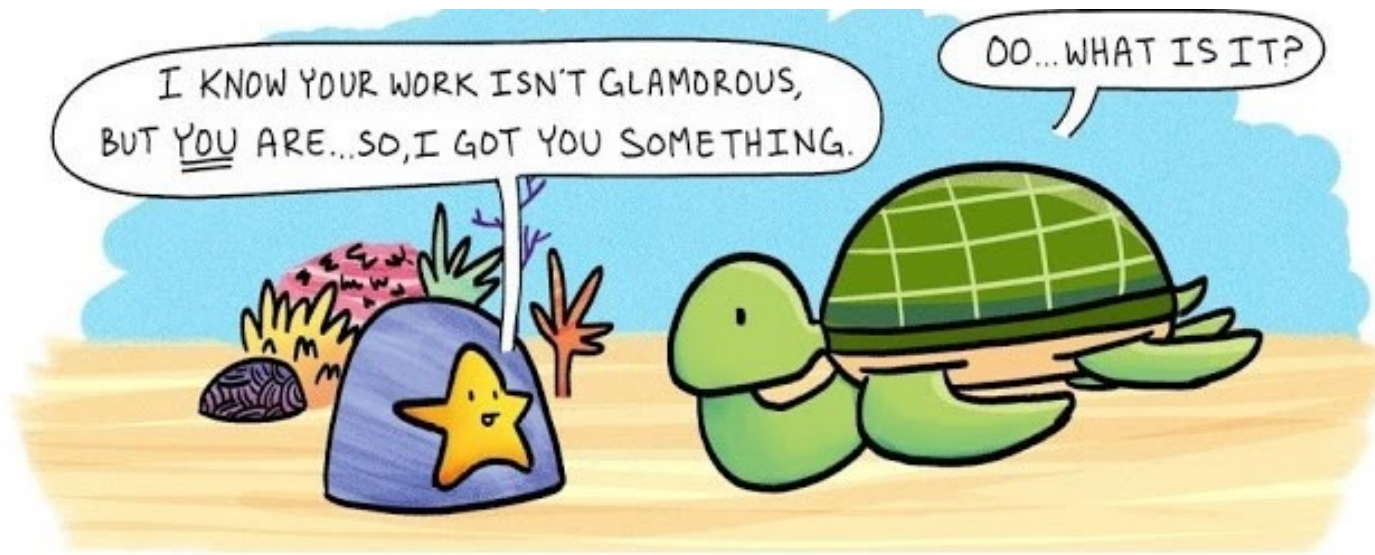
Source: Substance Abuse and Mental Health Services Administration (SAMHSA) (2014). *Addiction Counseling Competencies: The Knowledge, Skills, and Attitudes of Professional Practice (Technical Assistance Publication Series: TAP 21)*. SAMHSA: Rockville, MD





CONCLUSION AND WRAP-UP

Questions and Final Comments



Outreach Services Manager at Swope Health Services, NASW-MO Chapter Board Member and Professional Workshop Presenter, trained with the National NASW Office of Ethics and Professional Review, Ethics Presenter for Missouri Credentialing Board

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You deserve the best

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