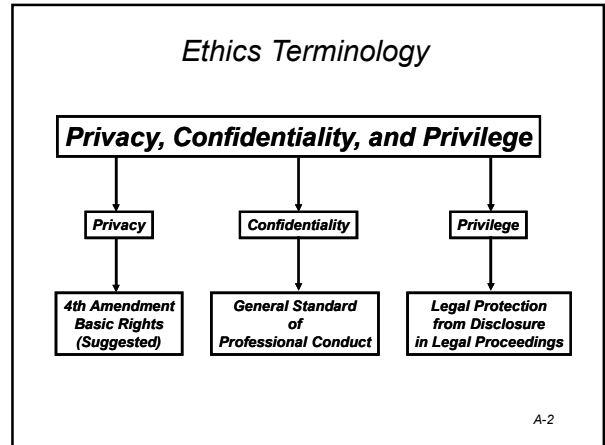


*Legal and Ethical Considerations*  
 2012


*Forensic Mental Health Association*

Presented By  
*Pamela H. Harmell, Ph.D.*

A-1



*Confidentiality...*



A-3

- Ethics Committees*
- **General Counselors**
    - American Counseling Association (ACA) Code of Ethics
  - **Psychologists**
    - APA / State ethics committee
  - **MFTs**
    - AAMFT / State Code
  - **LCSWs**
    - NASW / CSWA
  - **LCPP – 2011**
    - [http://www.bbs.ca.gov/lpcc\\_program/lpcc\\_grandparent\\_path.shtml](http://www.bbs.ca.gov/lpcc_program/lpcc_grandparent_path.shtml)
  - **Addiction Counselors**
    - NAADAC
- A-4

*Risk Management Formula*  
 Bennett et al. (2006)

*Clinical Risk = (P x C x D) (interaction)*  
 TF (modified by)

*P = patient risk characteristics*  
*C = context in which event took place*  
*D = disciplinary consequences*  
*TF = therapist factors (most important)*

See next slides for details

A-5

*Risk Management Formula*  
 Bennett et al., 2006, p. 12

***P = Patient Risk Characteristics (1)***

- **Complex PTSD:**
  - Captivity; psychological fragmentation, loss of sense of safety, trust, self-worth; loss of coherent sense of self
  - Judith Herman (1997) *Trauma & Recovery* (original citation)
- **Dissociative identity disorders**
- **Reported recovered memories**
- **Involved in complex lawsuits**
- **Difficult custody battles**
- **Litigious personalities**
- **Focus on aggressive confrontations**

Clinical Risk =  $\frac{P \times C \times D}{TF}$

A-6

**Risk Management Formula**  
 Bennett et al., 2006, p. 12

**P** = Patient Risk Characteristics (2)

- Diagnoses of Borderline, Narcissism, Antisocial PDs
- Specific traits
  - Entitlement
  - Idealization and vilification of therapist and others
  - Pervasive inability to accept objective, constructive feedback
  - Eroticized transference

—————→

Clinical Risk =  $\frac{(P \times C \times D)}{TF}$

A-7

**Risk Management Formula**  
 Bennett et al, 2006

**C** = Contextual Risk Factors

- Total circumstances under which you are working with the patient
  - Setting
  - Type of service
    - Evaluation, assessment, court appearance
    - Custody evaluation, insanity defense
    - Prediction of violence

Clinical Risk =  $\frac{(P \times C \times D)}{TF}$

A-8

**Risk Management Formula**  
 Bennett et al, 2006

**D** = Disciplinary Consequences

- Proactive – Help (consult) before the fact
  - Professional associations
  - Colleagues, attorneys
  - Professional consult
- Reactive – After the fact
  - Civil or criminal allegation
  - Licensing board or ethics committee complaint

Clinical Risk =  $\frac{(P \times C \times D)}{TF}$

A-9

**Risk Management Formula**  
 Bennett et al, 2006

**TF** = Individual Therapist Factors (1) (most important)

- Personal skill inventory
  - Knowledge, experiences, competencies, education
- Knowing one's limits
  - Consultation when necessary
  - When to refer out

Clinical Risk =  $\frac{(P \times C \times D)}{TF}$

A-10

**Risk Management Formula**  
 Bennett et al, 2006

**TF** = Individual Therapist Factors (2)

- Self-knowledge and self-care
- Time off
- Strong personal life counterbalances
  - Hobbies
  - Vacations
  - Exercise
  - Friends and family

Clinical Risk =  $\frac{(P \times C \times D)}{TF}$

A-11

**Risk Management Formula**  
 Bennett et al, 2006  
 Practice Vignette

Clinical Risk =  $\frac{(P \times C \times D)}{TF}$

P = patient risk characteristics  
 C = context  
 TF = therapist factors      D = disciplinary consequences

An unmarried psychotherapist did an assessment for malingering on a young woman. He did not find that she was malingering, as she was not being deceptive or feigning an illness. A year later they ran into each other at the local coffee shop where they chatted for several minutes. When she invited him over to dinner that weekend he said he would check his calendar and give her a call. Since he had not dated for three months since his last relationship broke up, he was ready to get back into the world.

A-12

*Risk Management Formula*  
 Bennett et al., 2006  
 Practice Vignette

Clinical Risk =  $\frac{(P \times C \times D)}{TF}$

P = patient risk characteristics  
 C = context  
 TF = therapist factors      D = disciplinary consequences

**P – Patient risk factors.** This was only an assessment, not “therapy.” Patient did not have serious PD. Patient appeared mentally healthy.

**C – Context risk factors.** Uncomplicated assessment, bills paid promptly, non-litigious person. Psychologist never suggested a post-termination relationship.

**D – Disciplinary consequences.** Ethics codes suggest avoiding multiple reals if they could be exploitative or cause harm, noting not all MR are unethical. However, codes prohibit a sexual relationship for at least two years after a normal termination with the burden placed upon the psychotherapist to protect the former patient. Also, this encounter was only one year later.

A-13

*Risk Management Formula*  
 Bennett et al., 2006  
 Practice Vignette

Clinical Risk =  $\frac{(P \times C \times D)}{TF}$

P = patient risk characteristics  
 C = context  
 TF = therapist factors      D = disciplinary consequences

**TF = therapist factors.** Therapist just went through a relationship break up, which made him more vulnerable to “blind spots” and possible risks to potential legal or ethical problems .

**Outcome:** Perhaps small risk, but therapist factors make the action suspect due to former therapist’s vulnerability. After psychotherapist sought consultation from his insurance company, he politely told former patient he had previous plans he could not change. Perhaps they will meet after the two year requirement???

A-14

*Most Common Types of APA Disciplinary Actions*  
 Bennett et al., 2006, p. 21

<u>Category</u>	<u>1994 – 2003</u>	<u>No. of Cases</u>
Sexual misconduct (adult)		198
Nonsexual duals		72
Insurance/fee problems		72
Child custody		65
Confidentiality		40
Working outside competence		28
Inappropriate follow-up/termination		20
Test misuse		20
Termination/supervision		21
False, fraudulent, or misleading adv		17
Sexual misconduct (minor)		10
Inappropriate response to crisis		10

A-15

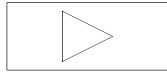
- Forensic Psychology*  
 Gregory, 2010
- Duties of Forensic Psychologists*
- Evaluation of malingering
  - Assessment of mental state for insanity plea
  - Competency to stand trial
  - Evaluation of custody
- A-16

- Forensic Psychology*  
 Gregory, 2010
- Duties of Forensic Psychologists*
- Assessment of personal injury
  - Interpretation of polygraph data
  - Specialized forensic personality assessment
  - Sentencing recommendations
- A-17

- Forensic Psychology*  
 Gregory, 2010
- Ethical Issues in Forensic Psychology*
- Legal questions get examines versus psychological questions
  - Knowledge of legal jargon and court process
  - Not acting as advocate for client
  - Remain neutral
  - Do not take sides
- A-18

*APA Specialty Guidelines  
Forensic Psychology*

[http://www.apls.org/  
aboutpsychlaw/SGFP\\_Final\\_Approved\\_2011.pdf](http://www.apls.org/aboutpsychlaw/SGFP_Final_Approved_2011.pdf)



A-19

*Forensic Psychology  
Melton, 2007*

*Ethical Responsibilities of Forensic Psychologist*

SCOPE

*Address narrowly defined set of events or  
interactions of a nonclinical nature*

A-20

*Forensic Psychology  
Melton, 2007*

*Ethical Responsibilities of Forensic Psychologist*

IMPORTANCE OF CLIENT'S PERSPECTIVE

*Greater interest in accuracy about what  
occurred than client's perspective about what  
occurred*

A-21

*Forensic Psychology  
Melton, 2007*

*Ethical Responsibilities of Forensic Psychologist*

VOLUNTARINESS

*Evaluation of clients is ordered by a judge or  
behest of an attorney*

A-22

*Forensic Psychology  
Melton, 2007*

*Ethical Responsibilities of Forensic Psychologist*

AUTONOMY

*Voluntary clients have more flexibility and  
patient concerns are taken into  
consideration. The objective of a forensic  
examination is confined by applicable  
statutes that pertain to the legal issues in  
question*

A-23

*Forensic Psychology  
Melton, 2007*

*Ethical Responsibilities of Forensic Psychologist*

RELATIONSHIP AND DYNAMICS

*An emotional distance must be kept by  
evaluator in order to remain neutral and  
avoid divided loyalties unlike the  
psychotherapy relationship*

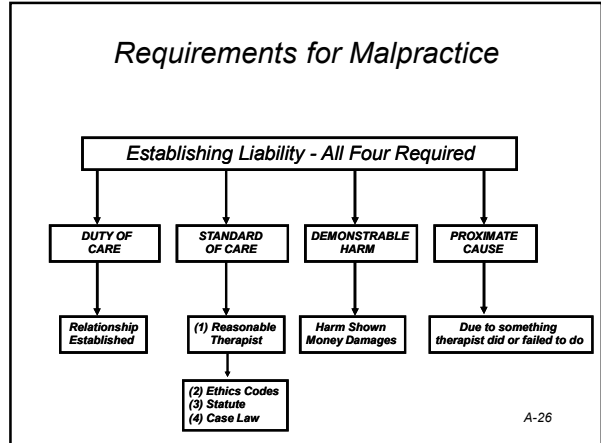
A-24

*Forensic Psychology*  
*Melton, 2007*

*Ethical Responsibilities of Forensic Psychologist*

**PACE AND SETTING**  
*Court setting places various constraints upon the evaluation process without opportunities for re-evaluation. Accuracy is the focus.*

A-25



**References**

Bennett, B. et al., (2006). *Assessing and Managing Risk in Psychological Practice: An Individualized Approach*. Rockville, MD: The Trust.

Clayton, S., & Bongar, B. (1994). *The use of consultation in psychological practice: Ethical, legal & clinical considerations*. *Ethics & Behavior*, 4, 43-57.

Gregory, R. (2010). *Psychological Testing: History, Principles, and Application* (5<sup>th</sup> ed.).

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**References**

Koocher, G., & Keith-Spiegel, P. (2008). *Ethics in Psychology and the Mental Health Professions* (3<sup>rd</sup> Ed). NY: Oxford University Press.

Melton, G. (1997). *Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers* (2<sup>nd</sup> ed.). NY: The Guilford Press. Pp. 41-45.

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