Legal and Ethical Considerations

Forensic Mental Health Association
Presented By
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Ethics Terminology

Privacy, Confidentiality, and Privilege

- Privacy
- Confidentiality
- Privilege

4th Amendment
Basic Rights
(Suggested)

General Standards
of Professional Conduct

Legal Protection
from Disclosure
in Legal Proceedings

Confidentiality...

Ethics Committees

- General Counselors
  - American Counseling Association (ACA) Code of Ethics
- Psychologists
  - APA / State ethics committees
- MFTs
  - AAMFT / State Code
- LCSWs
  - NASW / CSWA
- LPCP – 2011
  - http://www.bbs.ca.gov/lpcc_program/lpcc_grandparent_path.shtml
- Addiction Counselors
  - NAADAC

Risk Management Formula
Bennett et al. (2006)

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

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

See next slides for details

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 = \( \frac{P \times C \times D}{TF} \)
Risk Management Formula
Bennett et al., 2006, p. 12

\[ P = \text{Patient Risk Characteristics (2)} \]
- 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

\[ \text{Clinical Risk} = \frac{(P \times C \times D)}{TF} \]

Risk Management Formula
Bennett et al, 2006

\[ C = \text{Contextual Risk Factors} \]
- 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

\[ \text{Clinical Risk} = \frac{(P \times C \times D)}{TF} \]

Risk Management Formula
Bennett et al, 2006

\[ D = \text{Disciplinary Consequences} \]
- 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

\[ \text{Clinical Risk} = \frac{(P \times C \times D)}{TF} \]

Risk Management Formula
Bennett et al, 2006

\[ TF = \text{Individual Therapist Factors (1) (most important)} \]
- Personal skill inventory
  - Knowledge, experiences, competencies, education
- Knowing one’s limits
  - Consultation when necessary
  - When to refer out

\[ \text{Clinical Risk} = \frac{(P \times C \times D)}{TF} \]

Risk Management Formula
Bennett et al, 2006

\[ TF = \text{Individual Therapist Factors (2)} \]
- Self-knowledge and self-care
- Time off
- Strong personal life counterbalances
  - Hobbies
  - Vacations
  - Exercise
  - Friends and family

\[ \text{Clinical Risk} = \frac{(P \times C \times D)}{TF} \]
Risk Management Formula
Bennett et al., 2006
Practice Vignette

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

- \( P \) = patient risk characteristics
- \( C \) = context
- \( D \) = disciplinary consequences
- \( TF \) = therapist factors

**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-jealous person. Psychologist never suggested a post-termination relationship.

**D** – Disciplinary consequences. Ethics codes suggest avoiding multiple roles 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.

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

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

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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

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Forensic Psychology
Gregory, 2010

Ethical Issues in Forensic Psychology
- Legal questions get examined versus psychological questions
- Knowledge of legal jargon and court process
- Not acting as advocate for client
- Remain neutral
- Do not take sides
APA Specialty Guidelines
Forensic Psychology


Forensic Psychology
Melton, 2007
Ethical Responsibilities of Forensic Psychologist

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

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

Forensic Psychology
Melton, 2007
Ethical Responsibilities of Forensic Psychologist

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

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

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
**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.

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**References**


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**Requirements for Malpractice**

**Establishing Liability - All Four Required**

- Duty of Care
- Standard of Care
- Demonstrable Harm
- Proximate Cause

Relationship Established

1. Reasonable Therapist
2. Harm Sustained
3. causal Relationship
4. Due to something therapist did or failed to do

**References**
