COUPLES, KIDS COURTS AND HEALTH CARE: ETHICAL CHALLENGES

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ETHICAL CHALLENGES IN CHILD, MARITAL, AND FAMILY WORK

CLINICAL COMPETENCE

What skills do I need to practice in this arena?

Remember, families typically include…

- People with non-congruent, competing, or conflicting interests.
- People who wish to keep secrets from each other.
- People who do not wish to be totally candid with each other.
- People with differing levels of decisional capacity, dependence, and interdependence.
- People who ultimately may be psychologically better off by distancing themselves from a family unit or by breaking off a relationship.

Clinical Challenge

- You're a well-trained licensed mental health professional whose training and practice since graduate school has focused on individual psychotherapy with adults aged 20 – 65. You have taken a job where you will be called upon to treat couples and families (with children) stressed by deployments, relocations, and loss. They will come from all segments of American society and will be ethnically, racially, and culturally diverse.
  - *Are you ready?*
  - *If not, what must you do to get ready?*
  - *Here comes the first case now; what should you do?*

APA 2002/2010 Code Standards on Competence

- 2.01 (a) (a) Psychologists provide services, teach and conduct research with populations and in areas only within the boundaries of their competence, **based on their education, training, supervised experience, consultation, study or professional experience.**
- 2.01 (b) Where scientific or professional knowledge in the discipline of psychology establishes that **an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status is essential** for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals…
- 2.01 (c) Psychologists provide services, teach, and conduct research with populations and in areas **only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience.**

APA 2002/2010 Code Standards on Competence

- **2.02 Providing Services in Emergencies**
  In emergencies, when psychologists provide services to individuals for whom other mental health services are not available and for which psychologists have not obtained the necessary training, psychologists may provide such services in order to ensure that services are not denied. The services are discontinued as soon as the emergency has ended or appropriate services are available.
- **2.03 Maintaining Competence**
  Psychologists undertake ongoing efforts to develop and maintain their competence.

What qualifies you as a child, couple, or family therapist?

- Child Development and Child Therapy
- Family Systems
  - *Formulations*
  - *Interventions*
- Multi-client Ethics and Boundaries
- Multicultural Issues
- Credentials
  - *Licenses*
  - *Board Certification*

AAMFT Core

- **Admission to Treatment**
  - *All interactions between clients and therapist up to the point when a therapeutic contract is established.*
- **Clinical Assessment and Diagnosis**
  - *Activities focused on the identification of the issues to be addressed in therapy.*
- **Treatment Planning and Case Management**
  - *All activities focused on directing the course of therapy and extra-therapeutic activities.*
- **Therapeutic Interventions**
  - *All activities designed to ameliorate the clinical issues identified.*
- **Legal Issues, Ethics, and Standards**
  - *All aspects of therapy that involve statutes, regulations, principles, values, and mores of MFTs.*
- **Research and Program Evaluation**
  - *All aspects of therapy that involve the systematic analysis of therapy and how it is conducted effectively.*

- Remain mindful of ethical issues associated with
  - *Competence*
  - *Confidentiality*
  - *Informed consent or assent*
  - *Role clarity*
  - *The need for active case management and updating consent as change occurs or new issues arise*

CHILDREN'S COMPETENCE TO CONSENT

A fundamental element to participating as a client

Clinical Challenge

- Your newest client is a 14 year old brought in by parents at the insistence of school authorities who complain about school discipline issues and truancy. When asked about problems in the family the adolescent says, “I don’t want to be here. I only have two problems; him and her” (pointing to the parents).
- How do you begin planning treatment?
  - *Does the 14 year old have the right to veto treatment?*
  - *How will you proceed with a reluctant client?*

Why talk about consent?

- Involvement in assessment or treatment requires consent (or permission).
  - *Permission = one person authorizing participation for another.*
- Assent of incompetent persons is also required, except in situations here therapeutic benefit is reasonably expected to result for the incompetent person.

What are you asking for when you ask a client: "Is that okay with you?"

- Consent
  - *Competent, Knowing, Voluntary*
- Assent
  - *Veto Power*
  - *Therapeutic versus non-therapeutic context*
- Permission
  - *Proxy Consent*
  - *Substituted Judgment*

Essential Components of Informed Decision Making

- Information
  - *Access*
- Understanding
  - *Comprehension*
- Competency
- Voluntariness
- Decision Making Ability
  - *Reasoning Capacity*

APA Code Comments on Consent

- For persons who are legally incapable of giving informed consent, psychologists nevertheless
  - *provide an appropriate explanation,*
  - *seek the individual's assent,*
  - *consider such persons' preferences and best interests, and*
  - *obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law. When consent by a legally authorized person is not permitted or required by law…take reasonable steps to protect the individual's rights and welfare.*

APA Code Comments on Informed Consent

- When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.
- Psychologists appropriately document written or oral consent, permission, and assent.

Competence to Consent

Ask yourself:

Does the child (or potentially incompetent adult) have…

- the ability to understand information offered about the nature and potential consequences of the pending decision;
- the ability to express a clear decision;
- the ability to make the decision on appropriate bases; and
- the ability to make an appropriate (i.e., safe and legal) decision.

Children's Competence to Consent

Ask yourself:

- Are the interests of the child and adult providing permission aligned?
- If not, does the child have:
  - *The ability to understand information offered about the nature and potential consequences of the pending decision?*
  - *The ability to manifest a decision?*
  - *The ability to make an appropriate decision on reasonable bases?*
- How do I weigh discrepancies in preferences?

How are Child Participants Different from Adults in Decisional Authority?

- Legal Status (presumed incompetent)
  - *de jure incompetence (by right)*
  - *de facto incompetence (by ability)*
- Socialization Influences
- Time perspective
- Concept manipulation abilities

Differing levels of decisional capacity and dependence

Physical dependence
Emotional dependence
Financial dependence

Socialization Influences

- Socialization Influences
  - The case of Ricky Ricardo
  - Green

Time perspective

Time perspective: Sequences and duration

Concept manipulation capabilities

- Concept manipulation abilities
  - Piagetian
  - Cognitive processes
  - Developmental
  - Frameworks
    - Magical thinking and hypothetical reasoning

Ability to anticipate consequences using “What if?” hypothetical reasoning.

Legal Minority Status

Minors: below the age of legal competence

-Emancipated or “Mature” Minors

-**Drew Barrymore** and **Alicia Silverstone** at 15 wanted freedom from child labor laws

-**Jaime Pressly** at 15 to take a modeling job overseas

-**Corey Feldman** at 15 for financial reasons (married at 17)

-**Dominique Moceanu** at 17 for financial and emotional abuse reasons.

Clinical Challenge

- An unaccompanied 14 year old appears in the admissions office of a psychiatric facility in Brattleboro seeking treatment for depression with suicidal ideation and a record opf alcohol dependence. The child reports running away from allegedly physically abusive substance abusing parents. Can you accept the child for treatment? Who (if anyone) must you contact?

What Vermont Practitioners Should Know

- Under Vermont law, consent for medical or mental health treatment cannot be provided by individuals under 18 years of age. Consent for treatment for such an individual can only be granted by a parent or guardian unless an emergency situation necessitates immediate treatment and the parent or guardian is not immediately available. In addition:
  - Minors who are married or have ever been married; minors on active U.S military duty; and minors emancipated by court order may give informed consent to their own health care.
  - Minors of any age may provide their own informed consent for the termination of pregnancy, or to receive medical treatment necessary to obtain contraceptive devices and medications.
  - Minors of any age may provide their own informed consent for medical treatment related to rape, incest, or sexual abuse. Health care providers are required to report such incidents to the Department of Children and Families within 24 hours.
  - Minors 12 years of age and older may give informed consent for treatment for sexually transmitted diseases, drug dependence, and alcohol abuse. If a minor requires hospitalization for treatment of any of these conditions, the parents must be notified of the hospitalization.
  - Minors 14 years of age and older may voluntarily admit themselves to a hospital for mental health care if they provide informed consent in writing.
  - Minors under the age of 14 years may voluntarily admit themselves to a hospital for mental health treatment if they provide their own written informed consent and a written application from a parent or guardian.

IMPORTANT LEGAL PRECEDENTS

How the courts view parental authority and children’s rights

Clinical Challenge

- The parents of a 5 year old hospitalized for treatment of newly diagnosed acute lymphoblastic leukemia (standard risk) are distressed about the side-effects their child is experiencing. They want to stop the treatment and take their child to Mexico for treatment by a naturopath.
  - *Can they do that?*
  - *As the behavioral health consultant to the medical team, what do you advise?*

Basic Principles Underlying the Authority of the State

- police power
  - *The state's authority to protect the community and ensure domestic tranquility.*
- *parens patriae*
  - *The state's authority to act as the "general guardian of all infants, idiots and lunatics."*

Parental Right of Control

- Pierce v. Society of Sisters (1925)
  - *Parental decisions to send their children to private (parochial) schools are okay.*
- Meyer v. Nebraska (1923)
  - *Okay to teach German to children before 9th grade.*

Important Case Law
on Decision Making and Children

- *Prince v. Massachusetts*, 321 U.S. 158 (1944)
  - *Parents may not make martyrs of their children*
- *Parham v. J.R.*, 442 U.S. 584 (1979)
- *Fare v. Michael C.*, 442 U.S. 707 (1979)
- Palmori v. Sidoti (1984)

Prince v. Massachusetts (1944)

- Betty M. Simmons, age 9
- Sara Prince aunt and custodian
- The issue: Do religious convictions trump child labor laws?
- “Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before … they can make that decision for themselves.”

Parham v. J.R. (1979)

- The reluctant volunteers (children voluntarily hospitalized by parents). “Parents know best.”
- Affirmative duty to release recovered patient?
- Least restrictive treatment?
- Admitting medical officer provides a hearing.
  - *“Admissions’ staffs…acted in a neutral and detached fashion.”*
- Notion of stigma rejected; psychiatric hospital admission equated to tonsillectomy.
- Judicial oversight described as a “time-consuming procedural minuet” and impediment to care.
- Georgia met due process requirements

Palmore v. Sidoti, 466 U.S. 429 (1984)

- Anthony and Linda Sidoti, both Caucasians, were divorced and Linda was awarded custody of their 3 year old daughter, Melanie.
- One year later, Anthony sought custody of the child after Linda began cohabitating with Clarence Palmore, an African-American.
- The Florida courts awarded Mr. Sidoti custody of the child based on the premise that the child would be more vulnerable to social stigmatization in a racially mixed household.
- No evidence was introduced that indicated Ms. Sidoti was unfit to continue the custody of the child.

Palmore v. Sidoti, 466 U.S. 429 (1984)

- In a unanimous decision, the Court held: “The effects of racial prejudice, however real, cannot justify a racial classification for removing an infant child from the custody of its natural mother.”
- "Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." The Court thus held that the decision of the lower courts was an unconstitutional denial of rights under the Fourteenth Amendment.

CONFIDENTIALITY
IN CHILD AND FAMILY CONTEXTS

We'll talk about confidentiality and specific health care regulations this afternoon.

Clinical Challenge

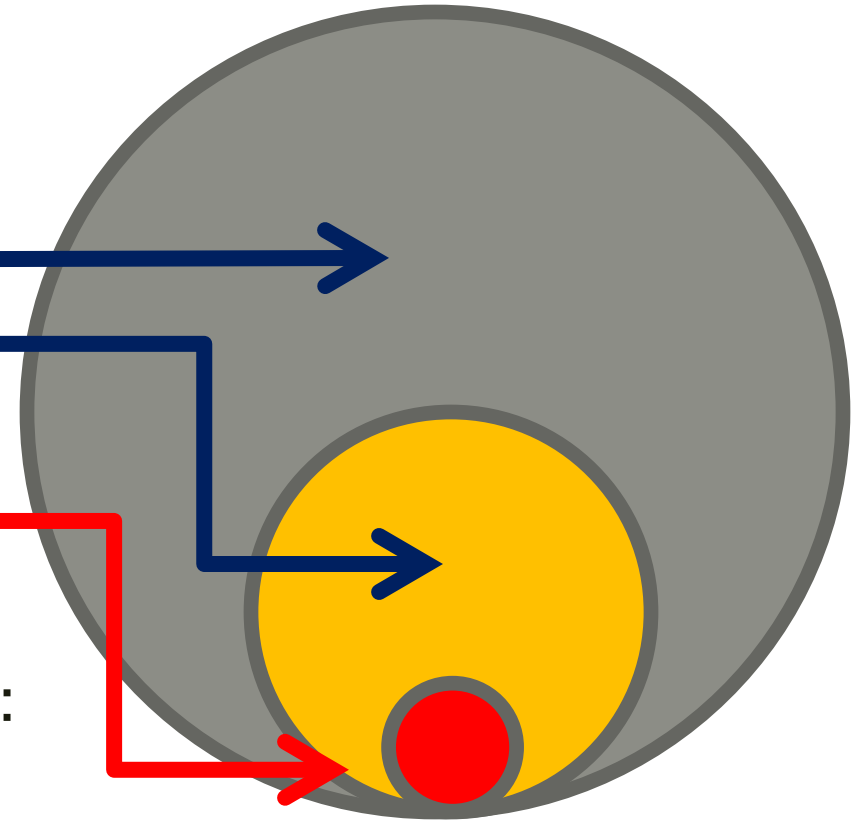
- Donna Rhea, a 15 year old 10th grader has been seeing you weekly for treatment of depression over the last two months. She's told you that boy friend has been encouraging her to have intercourse and that they're planning to "do it" this weekend.
  - *What will you do/say?*
  - *Is this confidential?*
  - *Does it matter if the boyfriend is 15, 19, or 25?*

Clinical Challenge

- Dana and Hayden have been seeing you in marital therapy for three months with a stated goal of improving their relationship. Dana has asked for a private meeting, and tells you about a current extra-marital affair. At the end of the disclosure Dana says, “This is confidential right?”
  - *What should you say/do?*

Privacy, Confidentiality & Privilege Domain Breadth

- Privacy
  - *A constitutional right*
- Confidentiality
  - *A professional standard*
- Privilege
  - *A narrow legal protection*



- Excellent confidentiality source:
- http://jaffee-redmond.org/

Privacy

- The Constitutional right of individuals to choose for themselves whether, when, and how private information will be revealed.
- The word privacy does not appear in the Constitution, but we can infer the concept in:
  - *Amendment 3 – quartering of soldiers*
  - *Amendment 4 – search and seizure*
  - *Amendment 5 – trial and punishment*
  - *Amendment 15 – right to vote regardless of race, color, or previous servitude*

Confidentiality and Privilege

- Confidentiality: The duty imposed on professionals to keep information disclosed in professional relationship in confidence.

- Privilege: The patient's right to keep confidential communications from being disclosed in a legal proceeding.

Sharing information about children's psychotherapy with their parents

- Basic concept: therapy has to be safe for all participants and parents need to know info about their children that allows them to fulfill parental responsibilities.

Sharing information about children's psychotherapy with their parents

- Children should have consensual confidentiality rights.
- Parents should have regular progress reports.
- Therapists may breach a child's confidentiality non-consensually to prevent serious harm, disclosing only info necessary for parents to protect.
  - *Clarify meaning of serious harm to avoid confusion.*

Principles underpinning exceptions to privacy protections

- When there are competing social policies *Parens patriae* doctrine (i.e., the parentalistic state as the guardian or protector of the incompetent)
  - *Adult example: use of police powers and confinement to protect (e.g., Joyce Brown, AKA: Billie Boggs v. Mayor Koch, 1987).*
  - *Legislatures have enacted protective mandates.*
- When a patient's behavior becomes inconsistent with social policies supporting privacy.

Straightforward exceptions or waivers of confidentiality

- No duty owed to disclosing party (i.e., not my patient)
- Patient consents or authorizes release
- Consultations with other professionals to advance patient care
- Abuse reporting (statutory)
- Abuse proceedings triggered by reporting.

Still more exceptions to confidentiality

- Professional responsibility to protect others
- Professional responsibility to protect clients from life-threatening self harm
  - *Tarasoff v. Regents*
  - *MacIntosch v. Milano*
  - *Thompson v. County of Alameda*
  - *Other progeny of Tarasoff*

Still more exceptions to confidentiality

- FERPA or Title IX
  - *Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99)*
  - *Title IX Of The Education Amendments Of 1972, 20 U.S.C. A§ 1681 Et. Seq.*
- Health oversight or managed care
  - *TPO: treatment and payment operations under HIPAA*
- Bill collection
  - *Client status disclosures*
- Complaints/lawsuits and threats by patients
- Law enforcement personnel (very few states)

BOUNDARIES AND ROLE CLARITY

Clinical Challenge

- You've been treating Lee and Aiden for tension in their marital relationship for 2 months. When they started with you the mutual goal was "improving our marriage." It's become increasingly clear to you that the best psychological outcome for Lee is staying in the marriage, while the best psychological outcome for Aiden would be exiting the relationship.
  - *What should you do?*

Multiple Relationships in the APA Code of Conduct

- Psychologists refrain from entering into a multiple relationship if that relationship could reasonably be expected to impair their objectivity, competence, or effectiveness in performing his or her professional functions, or otherwise risks exploitation or harm to the client with whom the professional relationship exists.

Multiple Relationships in the APA Code of Conduct

- A multiple relationship occurs when a clinician is in a professional role with a person and
  - *(1) simultaneously occupies another role with the same person,*
  - *(2) at the same time is in a relationship with a person closely associated with or related to the psychologist's client, or*
  - *(3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the client.*

Multiple Relationships in the APA Code of Conduct

- When clinicians are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality and thereafter as changes occur.

Key Elements of a Potential Multiple Role Relationship Violation

- Inadequate consent
- Loss of objectivity
- Patient exploitation
- Disruption of treatment relationship or quality

Low-Risk Multiple Role Relationships

- Not all multiple relationships are risky.
  - *Relationships not reasonably expected to cause impairment or risk exploitation or harm are not unethical.*

Forensic contexts create mutually exclusive choices

- The decision to offer therapeutic services and forensic services requires mutually exclusive professional choices.
- Providing each service requires the expert to make a mutually exclusive choice of priorities: between patient welfare and assisting to the court.
- Providing each service requires a mutually exclusive choice: a relationship with the patient–litigant based on trust and empathy or one based on doubt and distance.
- Providing each service also requires a mutually exclusive level of involvement in the fabric of the patient–litigant's mental health: trying to better it or dispassionately evaluating it for the court.

What to do if a Multiple Relationship Happens

- If you find that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, take reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

- When required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, clarify role expectations and the extent of confidentiality at the outset and thereafter as changes occur.

WHO IS MY CLIENT?

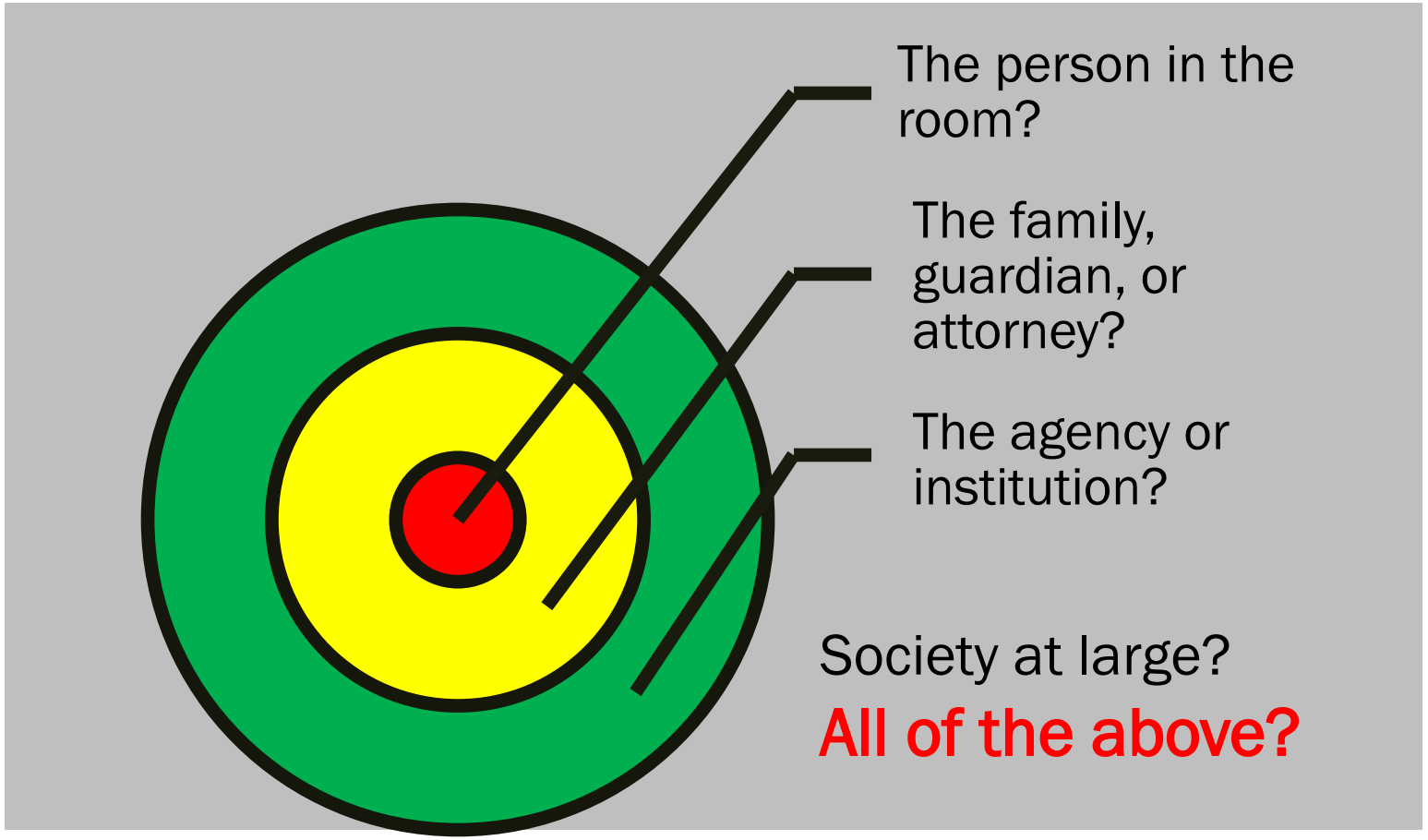
Clinical Challenge

- You have a contract with a local school system as a mental health consultant and are asked to evaluate a 3rd grader with a behavior problem.
- A probation officer refers for treatment a parent with a substance abuse history, who previously served six months for domestic abuse.
- You consult to the state police on hostage negotiation and are called to a school where an armed gunman has shot a teacher to death and is holding a classroom full of students hostage. The head of the swat team wants you to et on the phone to the gunman and lure him toward the window so that the SWAT team sharpshooter can get a “clean head shot.”

Who is the client?

- To whom do you believe you owe a professional duty?
- Who may believe that you owe them a professional duty?
- What have you done to clarify the nature, extent, and duration of such obligations?
- What documentation have you retained to document any of these points?

To whom do I owe a duty of care and in what hierarchical priority?



General considerations when contemplating a blending of roles

- Role conflicts between client and therapist.
- Involvement of third parties.
- Degree of the compatibility of expectations for the relationship.
- Divergent obligations of any added role.
- The existence of a power differential between therapist and client.

General considerations when contemplating a blending of roles:

- Intensity of the personal relationship already formed.
- Expected duration of the professional relationship.
- Level of clarity of the termination.
- Presence of any objectification of the client.
- Impulsivity level of the therapist.

Who is the client when a child enters therapy?

- Does a psychotherapist-client relationship exist when a parent participates in services only (or chiefly) to aid the child?
  - *If parent is not considered a client he/she should be specifically informed before professional activities begin.*
  - *Information provided in such contexts is confidential, but may not be privileged.*
  - *Document the parent's "client" status in writing*

Who is the client when a child enters therapy?

- Usual best option: designate parents as clients for limited purposes in your records and inform them.

Therapy Involving Couples or Families

- When psychologists agree to provide services to several persons who have a relationship (such as spouses, significant others, or parents and children), they take reasonable steps to clarify at the outset
  - *(1) which of the individuals are clients/patients and*
  - *(2) the relationship the psychologist will have with each person. This clarification includes the psychologist's role and the probable uses of the services provided or the information obtained.*

Therapy Involving Couples or Families

- If it becomes apparent that psychologists may be called on to perform potentially conflicting roles (such as family therapist and then witness for one party in divorce proceedings), psychologists take reasonable steps to clarify and modify, or withdraw from, roles appropriately.

Discussion topics when initiating a professional relationship

- Provide the same basic information given to individual clients
- Confidentiality limits
- Access to records
- Normal conflicts of interests in multiple client therapies
- Children’s rights and limitations in these situations

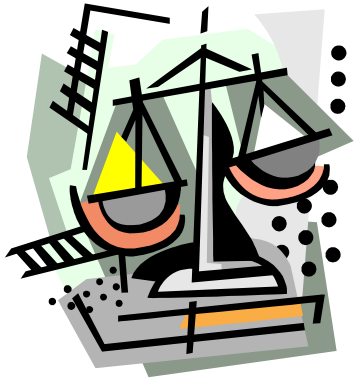
Working with Families and Children Topics to Discuss on Consent

- Basic information given individual clients.
- Confidentiality limits
- Access to records
- Normal conflicts of interests in multiple client therapies
- Children's rights and limitations on these
- Rules for disclosure of info across family
- Reminder that no one can predict the course of or changes in human relationships
- HIPAA rules

Who Can Consent to Treatment for a Minor Child?

- The Child
  - *Confirm applicability of state laws.*
- The Parents
  - *Joint custody means either parent may consent unless court decrees state otherwise.*
  - *With joint custody either parent can demand an end to therapy of minor child.*
  - *Resisting parental demand could result in disciplinary action.*

Who Can Consent to Treatment of Minor Child?



- When legal/physical custody is divided:
  - *Seek consent from both parents prior to evaluating or treating.*
  - *Request copy of divorce decree or letter from parent's attorney attesting to their authority.*

Who Can Consent to Treatment of Minor Child?

- When a parent is unavailable or when parental contact might reasonably be expected to harm the child:
  - *Seek consultation.*
  - *Note pros and cons of non-contact in your records.*

Parental disputes regarding child's treatment

- Consent to your services does not equal acceptance of payment responsibility.
  - *Clarify this in advance, preferably in writing, with the party accepting responsibility.*

Remember to discuss...

- Rules for disclosure of information across the family.
- Reminder that no one can predict the course of or changes in human relationships.

Isn’t it obvious?

- Do not engage in sexual intimacies with individuals known to be close relatives, guardians, or significant others of current clients/patients.
- Do not terminate therapy to circumvent this standard.

RECORD KEEPING IN MULTIPLE CLIENT CONTEXTS

Clinical Challenge

- Family therapy with Bob and Betty Bicker (plus their two school age children) has not gone well, and you're not surprised when Bob announces that he's moved out and is filing for divorce. A week later, you get a note from Bob's attorney with a release of information form signed by Bob that requests a complete copy of your clinical record and psychotherapy notes. You suspect a custody fight is looming.
  - *What should you do?*

Who’s in the record?

- Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain, and dispose of records and data relating to their professional and scientific work…
  - *(1) facilitate provision of services later by them or other professionals,*
  - *(2) allow for replication of research,*
  - *(3) meet institutional requirements,*
  - *(4) ensure accuracy of billing and payments, and*
  - *(5) ensure compliance with law.*

Multiple Client Therapies and Records

- Groups
  - *No privilege held in relationship to other group members*
- Couples
  - *What is the couple's contract?*
- Families
  - *What is the contract?*
  - *What will parents allow?*
  - *What about break-ups?*

Involvement of 3rd Parties

- When you agree to provide services to a person or entity at the request of a third party, attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes your role (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality.

FORENSICS AND CUSTODY

Where Those Without Forensic Training
Stumble Ethically Most Often.

Clinical Challenge

- After two years of treatment with you the child of a lawyer in the community had successfully terminated and is doing well. Six months later you get a call from the attorney asking you to take on a child custody evaluation for a case the law firm is handling. You're an experienced child/family clinician, but have not done a custody case before.
  - *What will you say/do?*
  - *Why?*

Be wary when treading into the legal system

- The legal system is *alien territory* for non-lawyers.
- There will be frequent opportunities and enticements to compromise scientific integrity, overlook ethical obligations, or otherwise go at risk.

The Culture Gap Between Psychologists and Lawyers

- Psychologists train as *behavioral scientists*.
- We believe that an individual applying rigorous experimental methods can discover significant truths within ranges of statistical certainty.
- Lawyers train as *advocates*.
- Lawyers believe that the search for truth depends on a vigorous adversarial cross-examination of the facts.

The Culture Gap

- Behavioral scientists seldom give simple dichotomous answers to questions.
- We prefer to use probabilities, ranges, norms, and continua that reflect the complexity of human differences.

- Lawyers learn to “try” or weigh facts.
- Lawyers expect clear, precise, unambiguous decisions, They seek to establish ***bright lines*** and clear dichotomies.

The Culture Gap

- We strive to empathize with our clients and show them unconditional positive regard.
- Little progress will occur in our work with clients, if we do not like/respect each other.
- We constantly collect data and try to ask all the important and sensitive questions.
- Attorneys believe that they can (and must) at times defend people they detest.
- Attorneys may choose not to ask their clients certain questions (e.g., “Did you do it?”) in order to defend them vigorously.

WHY ARE YOU TELLING ME ALL THIS? I'M NOT A FORENSIC PSYCHOLOGIST.

You or your report
may be going to court.

Mental Health Professional as a Fact Witness

- Can only testify from personal knowledge.
- Cannot analyze facts or give professional opinions.
- Governed by hearsay rule.
- Need not be paid for testimony

Mental Health Professional as Treating Expert

- Individuals with specialized training who have not been retained for purposes of litigation.
- Payment may not be required.
- May give opinions or conclusions regarding the professional services they provided.
- Role not clearly defined regarding specifics of opinions that may be given.

Mental Health Professional as Forensic Expert

- May provide full range of professional opinions.
- May base opinions on trial evidence or hypothetical questions.
- Testimony not governed by hearsay rule.
- Must be paid for time, but NEVER agree to a contingent fee.

Mental Health Professional as Forensic Expert (continued)

- Opinion must be based on a reasonable psychological certainty or probability.
- Cannot be court-ordered to become a forensic expert.
- Forensic expert data protected by lawyer-client privilege as work product.

Treating Expert in Custody Case

- Generates many complaints to licensing boards.
- It is unethical for treating psychologist to provide expert opinion on custody or visitation:
  - *Have not performed appropriate evaluation*
  - *Have fiduciary obligation to client that creates bias*
- Insist on a subpoena
- Limit testimony to opinions regarding your own patient(s)
  - *Avoid giving testimony on family members who have not been patients, even if seen collaterally*
  - *If asked about such individuals, qualify your answer*

Treating Expert in Custody Case

- Can give empirical testimony about clients you have seen, clearly identifying sources.
- Always seek consultation in such cases.
- Do not rely on client's attorney as sole data source about your court involvement.
- Be aware of conflicts between expert and advocate roles.
- Clarify your role carefully with the attorney retaining your services at outset and during process.

INTERESTING FAMILY LAW CASES

Classic Judicial Application of Child Development Knowledge

- *Shelley v. Westbrooke* (1816)
  - *Percy Bysshe Shelley, 1792-1822, poet, sexual libertine, and opium addict.*
  - *August, 1811- runs off to Scotland and marries Harriet Westbrooke (age 16).*
  - *July, 1814- departs for the continent with Mary Goodwin (age 16) abandoning Harriet who was pregnant with their 2nd child.*

Shelley v. Westbrooke (continued)

- December, 1816 – Harriet commits suicide by drowning in Hyde Park.
  - *Percy decides to raise the kids, but MGPs say "No!"*
  - *Percy marries Mary (to look better in custody dispute?).*
- Though fathers had nearly absolute rights under then-existing English law, Shelley became one of the first fathers in English history to lose custody of his children.

Shelley v. Westbrooke (continued)

- The court articulates the "tender years" doctrine.
  - *The court described Percy as "profligate and dissolute," but focused on his writings as an avowed atheist.*
  - *The Court of Chancery mostly relied on this, not on his infidelity or unreliability.*
  - *Lord Chancellor reasoned: Shelley endorsed atheism and sexual freedom, and would teach his children to do the same.*

U.S. Origin of Tender Years

- Maryland decision in *Helms v. Franciscus*, 2 Bl. Ch. (Md.) 544 (1830).
  - *While recognizing the general rights of the father, the court stated that it would violate the laws of nature to 'snatch' an infant from the care of its mother.*

THE “CATEGORY 5” DIVORCE

You won’t always see it coming.

“Category 5 Divorce” Sample Events

- Real or manipulative Duty to Warn Triggers
  - *Patient tells psychologist about his desire for revenge against his ex/spouse.*
- Who has the legal authority to initiate evaluation or treatment for a child?
  - *Parents who are separated*
  - *Parent with sole custody*
  - *Parent with joint or shared custody*
  - *Parent with visitation*
  - *Parents who suspect sexual abuse*

More “Category 5 Divorce” Events

- “Stealth” Custody or Change of Circumstance Evaluations can occur so consider:
  - *Elements for consent to evaluation of parties and children.*
  - *Elements for consent to needed for collaterals.*
  - *All parties must consent to release of joint records.*
  - *Can a clinician refuse to share records based on specific factors even with a valid release?*
    - Unpaid Bills
    - Chilling Effect on Treatment

Child Custody Cases: Key Advice

- Don’t treat the system casually!
- Get formal training and mentored experience.
- Seek judicial appointment, if possible (quasi judicial immunity may attach
- Clarify roles and expectations with all parties at the outset.

Eight Most Common criticisms of psychologists in custody disputes

1. Deficiencies and abuses in professional practice.
2. Inadequate familiarity with the legal system and applicable legal standards.
3. Inappropriate application of psychological assessment techniques.
4. Presentation of opinions based on partial or irrelevant data.

Eight Most Common criticisms of psychologists in custody disputes

5. Overreaching by exceeding the limits of psychological knowledge of expert testimony.
6. Offering opinions on matters of law.
7. Loss of objectivity through inappropriate engagement in the adversary process.
8. Failure to recognize the boundaries and parameters of confidentiality in the custody context.

ISSUES IN BEHAVIORAL HEALTH CARE ETHICS

The Culture of health Care

- Learning the culture of inter-professional practice
  - *Hierarchy, control, and roles*
  - *Access and services*
  - *Reimbursement systems (e.g., fee for service vs value based)*
- Learning the language
  - *Positive Findings*
  - *Progressive disease*
  - *S.O.B.*

KEY ETHICAL CHALLENGES ASSOCIATED WITH THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

- Clinical Competence and integrity with respect service an outcome metrics.
- Reconceptualizing Treatment Planning
- Multiple role conflicts with health care systems, regulators, and other providers.
- Confidentiality with respect to interoperable records and electronic service delivery.

Are you prepared for ACOs and PCMHs?

(Accountable Care Organizations and
Patient Centered Medical Homes)

- Organizational models for primary care that will improve our health care system (?)

Integrated Inter-professional Care

- Understanding the culture of interprofessional health care practice and functioning as a team player.
- Working with patients who have medical, mental health, behavioral health, and co-morbid problems in a fast-paced primary care context.
- Working with a more diverse (ethnically, socially, and economically) population than ever before.
- Ability to document the value added by psychologists' engagement.

Administrative and Financial Accountability and Autonomy

- Are you prepare to:
  - *Seek additional credentials?*
    - Board certification
  - *Integrate your practice?*
  - *Co-locate?*
  - *Contract?*
  - *Become an employee?*

How will reimbursement systems change?

- Medicare
- Medicaid
- Insurance exchanges
- Global payment systems
  - *Who takes the risks?*
  - *Who makes “medical necessity” decisions?*
- New billing an diagnostic codes
  - *Who’s codes rule?*

Will the ICD Replace the DSM?

New ICD-10 Codes

- V97.33XD: Sucked into jet engine, subsequent encounter.
- Y93.D: Activities involved arts and handcrafts.
- SW55.41XA: Bitten by pig, initial encounter.
- W61.62XD: Struck by duck, subsequent encounter.
- Z63.1: Problems in relationship with in-laws.
- W220.2XD: Walked into lamppost, subsequent encounter.
- Y93.D: V91.07XD: Burn due to water-skis on fire, subsequent encounter.
- W55.29XA: Other contact with cow, subsequent encounter.
- W22.02XD: V95.43XS: Spacecraft collision injuring occupant.
- W61.12XA: Struck by macaw, initial encounter.
- R46.1: Bizarre personal appearance.

Are you still using the GAF to rate clients disabilities?

Better learn WHO DAS

- World Health Organization Disability Assessment Scale 2.0
  - *http://www.who.int/classifications/icf/whodasii/en/*

Professional Development Steps to take now…

- Seek opportunities to learn interprofessional practice skills, new diagnostic and procedure codes.
  - *GAF vs WHO DAS 2.0*
- Gain competence in work with medical patients, particularly with behavioral health and co-morbidity linked to depression and anxiety.
- Consider professional/board certification and inter-jurisdictional practice credentials.

Changing Terrain

- Evolution of Psychiatry to Rx Dispensers
- Service delivery via telemetry
  - *On an upward trajectory*
- Record keeping
  - *The rules and practices are evolving rapidly*
- Access to information and the death of privacy
  - *Messaging and communication*
  - *Privacy*
  - *Social Networking*

Understanding Medical Crises from the Family Perspective

- Traditional systems of psychotherapy have not provided optimal models for dealing with critical illness and loss in family contexts.
- Thinking first about how we adapt to medical crises can help us better understand coping with bereavement.

Rethinking the Approach

- An “uncovering and interpreting” approach often runs counter to the perceived needs of patients in medical distress and their family members.
- When a medical crisis strikes, the psychosocial necessities are usually discernable on a conscious level.

Problems with traditional systems of psychotherapy to coping with illness

- Presumption of pathology
- Medical model
  - *Common etiology*
  - *Common natural history*
  - *Common treatment*
- Individual versus family as unit of treatment

Time for a new strategy

- Consider how life activities and goals have become disrupted
- Conceptualize the consequences as specific threats to patient's (or family member's) psychological adjustment.

What does the client need?

An opportunity…

- …to talk about and focus on the trauma.
- …to mourn the loss of the former self-image and way of being in the world.
- …to acquire information, support, and learn about the illness and disease process.
- …to make personal meaning of the experience.

The therapist can begin by…

- Eliciting the client's narrative
  - *What has happened?*
  - *What are my immediate concerns?*
  - *How have family members and friends reacted?*
  - *Beginning to seek out the clients attributions and deeper concerns.*

Resolving Specific Threats to Psychological Adjustment Posed by Chronic Illness

- Disrupted developmental trajectories
- School, work, or career interruptions
- Role changes in family life
- Peer relationships compromised
- Altered self-perceptions
- Uncertain outcomes
  - *(e.g., Damocles Syndrome)*
- Traumatic stresses (?)

RECORDS AND CONFIDENTIALITY

Health Care Contexts

HIPAA Privacy Rule Basics

- Psychotherapist-Patient Privacy Protected in 3 ways:
  - *Minimum Necessary Disclosure*
  - *State Law Pre-emption*
  - *Special Protection given to mental health information by dividing into two categories:*
    - Protected Health Information (PHI) or the “Clinical Record”
    - “Psychotherapy Notes”

What goes in the “clinical record”

The following information, if kept, must remain in the clinical record

- *1. Medication prescription and monitoring*
- *2. Counseling session start and stop times*
- *3. Modalities and frequencies of treatment*
- *4. Results of clinical tests (including raw test data)*
- *5. Summaries of:*
  - a. diagnosis
  - b. functional status
  - c. treatment plan
  - d. symptoms
  - e. prognosis
  - f. progress to date

What are “psychotherapy notes?”

- Actual language of rule on psychotherapy records or notes :
  - *“Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individuals medical record.”*

Psychotherapy notes: the HHS narrative

- *"The rationale for providing special protection for psychotherapy notes…not only that they contain particularly sensitive information, but also that they are the personal notes of the therapist, intended to help him or her recall the therapy discussion and are of little use or no use to others not involved in the therapy. Information…not intended to communicate to, or even be seen by, persons other than the therapist…we have limited the definition of psychotherapy notes to only that information…kept separate by the provider for his or her own purposes…not…the medical record and other sources of information…normally disclosed for [TPO]."*

Must practitioners keep “psychotherapy notes?”

- Clinicians are not legally or ethically required to keep psychotherapy notes; they remain completely optional
- The decision can vary from patient to patient, and from session to session, depending on the facts and circumstances of the case.
- Many psychologists will elect to keep one set of records to minimize complexity

More on psychotherapy notes

- Privacy rule is unclear about content
  - *Actual language of rule is broad*
  - *Language in HHS commentary narrow*
- Clinical record must provide adequate documentation of treatment
  - *Seeing psychotherapy notes as method of "hiding" essential treatment information is bad strategy.*

Integrated Record Systems: The eMR, ePHI, and e-billing

- Do you want to share your psychotherapy records with your proctologist?
- How can you avoid accidentally e-mailing sensitive material?
- What problems have we seen most commonly documented?

Definitions

- Electronic Health Records (EHR)
  - *Focus on total health of patient across providers*
- Electronic Medical Records (EMR)
  - *Digital clinical charts; not easily shared*
- Practice Management Software
  - *Demographics, scheduling, billing.*
- Interoperability
  - *Ability to exchange and use information*
- Role segregation
  - *An HER function that limits personnel access to need-to-know elements of record (clerk/clinician)*

Electronic issues in malpractice claims CRICO, 2013

- In 147 instances electronic health records contributed to “adverse events” affecting patients — half of them designated as serious (12 month period of newly filed malpractice claims 2012 - 2013, in a total pool of around 5,700 cases.
  - *Incorrect information (inserted and/or repeated)*
  - *Hybrid record conversion problems*
  - *Electronic routing failures*
  - *Unable to access data*
  - *Pre-filled forms or copied and pasted text*
  - *System design not aligned with need*

Steps to take now…

- Modify your HIPAA notice (if necessary) to comply with any eMR standards. Educate your patients even if not required under the “TPO exemption.”
- Take precautions (and educate your staff) to avoid improper transmissions.
- Use strong passwords and consider encryption for your files.
- If you consider joining a PCMH (Patient Centered or Primary Care Medical Home) use an sophisticated attorney to review the contract and consider an information technology consultant if record integration is involved.

No mandate for individual clinicians (outside hospitals) yet, but when it comes how will access influence what you write?

- Multi-practitioner access
- Patient real-time access
- HIPAA and HITECH both mandate role segregation
- Special mental health data segregation to be developed

Cloud Computing

- Where's the cloud
- How robust is the cloud
- What's in the cloud
  - *Software*
  - *Data storage*
- Who has access to the cloud
- Accessing remote computers

Avoiding Errors in Institutional Electronic Records

- Take care to avoid entering or repeating incorrect information.
- When records are being converted, uploaded, or used in a hybrid record system, check your work for conversion problems.
- Guard against electronic routing failures.
- Consider how you will access data, if the system becomes unusable for a period of time.

Avoiding Errors in Institutional Electronic Records

- Take great care when using pre-filled forms or attempting to copy and paste text.
- When adopting or entering a new system, check to assure that the design aligns with the clinical needs of our clients.
- Check appropriateness of access levels for the data you will enter.
- Make sure that your clients understand the nature of and security the record-keeping system, including which other practitioners will have access to their mental health records.

De-Identifying Health Care Information

- Properly sanitized health care information is not protected under HIPAA regulations (45 C.F.R. §164.514). The following identifiers should be removed or altered when preparing material for release or discussion in public statements, teaching, or research:
  - *Names*
  - *Geographic subdivisions smaller than a state (although the initial three digits of a zip code may be used)*
  - *Any dates (except years) directly related to an individual*
  - *Telephone, fax, social security, medical record, health plan identification, account, medical device identification, or license numbers*
  - *E-mail addresses web universal resource locators (URLs), Internet Protocol (IP) addresses*
  - *Biometric identifiers including finger and voice prints*
  - *Full face photographic or comparable images*
  - *Any other unique identifying number, characteristic, or code*

What Vermont Practitioners Should Know

- http://www.vtlegalaid.org/sites/default/files/Protected%20Health%20Information%20-%20What%20Vermonters%20Should%20Know.pdf

- HIPAA allows unemancipated minors to control the handling of their PHI in certain situations including the following:
  - *Where the minor alone consents to the health care service, no law requires any additional consent, and the minor has not requested that the covered entity treat another person as the minor's personal representative*
  - *Where the minor can obtain the health care service without the consent of a parent, guardian, or other person legally acting in place of the parent and either the minor, a court, or another legally authorized person consents to the health care service*
  - *Where the minor's parent or legal representative agrees to a confidential relationship between the minor and the health care provider.*
- When an unemancipated minor has control over his or her PHI in the situations listed above, a licensed health care professional using professional judgment has the option to provide a personal representative with access to the minor's PHI as long as the disclosure is permitted by law

Videoconferencing and Tele-Health

- HIPAA
  - *(Health Insurance Portability and Accountability Act)*
- HITECH
  - *(Health Information Technology for Economic and Clinical Health)*

- Sample sites providing videoconferencing and claiming HIPAA compliance:
  - *Cloudvisittm.com*
  - *Etherapi.com*
  - *Hippachat.com*
  - *Thera-link.com*
  - *Virtualtherapyconnect.com*
  - *Wecounsel.com*
  - *Zoom.us*

Bottom line: know the jurisdictional rules that apply to your practice.

- Including electronic or remote practice!

Vermont Statute Telepractice Statute 26 V.S.A. § 3018 (1999) Rule 3.10 Telepractice

Federal Drug and Alcohol Confidentiality Requirements

- 42 Code of Federal Regulations ("CFR") Part 2.
  - *Because stigma and fear of prosecution might dissuade people with substance use problems from seeking treatment, and extra extra layer of protection exists for these records.*
  - *These regulations outline the limited circumstances under which information about a patient's treatment may be disclosed with/without their consent.*
  - *This set of rules applies to individuals or entities that receive federal payment for providing alcohol or drug abuse diagnosis, treatment or referrals.*
  - *For-profit programs and private practitioners that do not receive federal assistance of any kind do not fall under these provisions unless the state licensing agency requires compliance.*

42 Code of Federal Regulations (“CFR”) Part 2.

- Restrict disclosure and use of alcohol and drug patient records maintained in connection with the performance of any federally assisted alcohol and drug abuse program
- Require patient consent for disclosures of protected health information even for the purposes of treatment, payment, or health care operations. Consent for disclosure must be in writing.
- Consent to release is revocable
- Exceptions include: written consent, internal program communications, removal of all patient-identifying information, medical emergency, court order, crime on program premises or against program personnel, research, audits and evaluations, child abuse and in conjunction with a qualified service organization agreement.
- School based SAP counselors, guidance counselor, school nurse, teacher representative and a representative of the principal’s office are all considered to be part of the program as key individuals concerned with the students’ overall social, health and educational functioning. The program must be defined and structured in a way that includes these individuals as part of the program. Students should be made aware that these individuals will receive information about them but that they are bound by HIPAA and 42 CFR Part 2.

42 Code of Federal Regulations (“CFR”) Part 2.

- Release w/o consent
  - *(a) General Rule. Under the procedures required by paragraph (c) of this section, patient identifying information may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.*
  - *(b) Special Rule. Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.*

Research and Audits Under 42 Code of Federal Regulations ("CFR") Part 2.

- (1) Person is qualified to conduct the research;
- (2) Has a research protocol under which the patient identifying information:
  - *(i) Will be maintained in accordance with the security requirements of § 2.16 of these regulations (or more stringent requirements); and*
  - *(ii) Will not be redisclosed except as permitted under paragraph (b) of this section; and*
- (3) Has provided a satisfactory written statement that a group of three or more individuals who are independent of the research project has reviewed the protocol and determined that:
  - *(i) The rights and welfare of patients will be adequately protected; and*
  - *(ii) The risks in disclosing patient identifying information are outweighed by the potential benefits of the research.*
- (b) A person conducting research may disclose patient identifying information obtained under paragraph (a) of this section only back to the program from which that information was obtained and may not identify any individual patient in any report of that research or otherwise disclose patient identities.
- § 2.53 — Audit and evaluation activities.

But wait…

- Use caution when asked for records by anyone other than the client, and make certain that the client understands the potential consequences of a release.
- Releases seeking information must conform to HIPAA and state law with respect to all components, including specific approval for release of psychotherapy notes, if sought.
- Intermingling of family or marital records may present problems.

Mandated abuse or neglect reporting

- 1.03 Conflicts Between Ethics and Organizational Demands
  - *If the demands of an organization with which psychologists are affiliated or for whom they are working…conflict with this Ethics Code…clarify the nature of the conflict, make known…commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards… Under no circumstances may this standard be used to justify or defend violating human rights…*

Mandated Reporting

Child abuse/neglect

- *"Reasonable cause to believe" or "reasonable suspicion"*
- *Vermont is a "suspicion" state.*
- *Sexual abuse may require additional actions*

Abuse/neglect of dependent persons

- *Elderly*
  - May include financial abuse
- *Disabled*
  - May allow more discretion by practitioner
- *Dangerous Driver (including elders and neurologically impaired)*
- *Firearm ID laws (Illinois FOID and NY SAFE acts)*
- *Use of tetrahydrocannabinol or has alcoholic beverages during pregnancy (Minnesota)*

Illinois Firearm Owners Identification Act (430 ILCS 65)

- On July 9th 2013, Illinois passed HB 183 (Public Act 098-0063), also known as the Firearm Concealed Carry Act. The Firearm Concealed and Carry Act expands the reporting requirements for healthcare facilities and physicians, clinical psychologists and qualified examiners to include any person that is: adjudicated mentally disabled person; voluntarily admitted to a psychiatric unit; determined to be a "clear and present danger"; and/or determined to be "developmentally disabled/intellectually disabled".
- The Illinois FOID Mental Health Reporting System website provides mandated reporters with 24-hour and immediate access to report an individual that is receiving mental health treatment or is determined to be a clear and present danger, developmentally disabled or intellectually disabled.

626.5561, Minnesota Statutes 2007: REPORTING OF PRENATAL EXPOSURE TO CONTROLLED SUBSTANCES---

- "A person mandated to report... shall immediately report to the local welfare agency if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive.
- Any person may make a voluntary report if the person knows or has reason to believe that a woman is pregnant and has used....
- An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the local welfare agency. Any report shall be of sufficient content to identify the pregnant woman, the nature and extent of the use, if known, and the name and address of the reporter."

HIPAA Breach Notification Laws

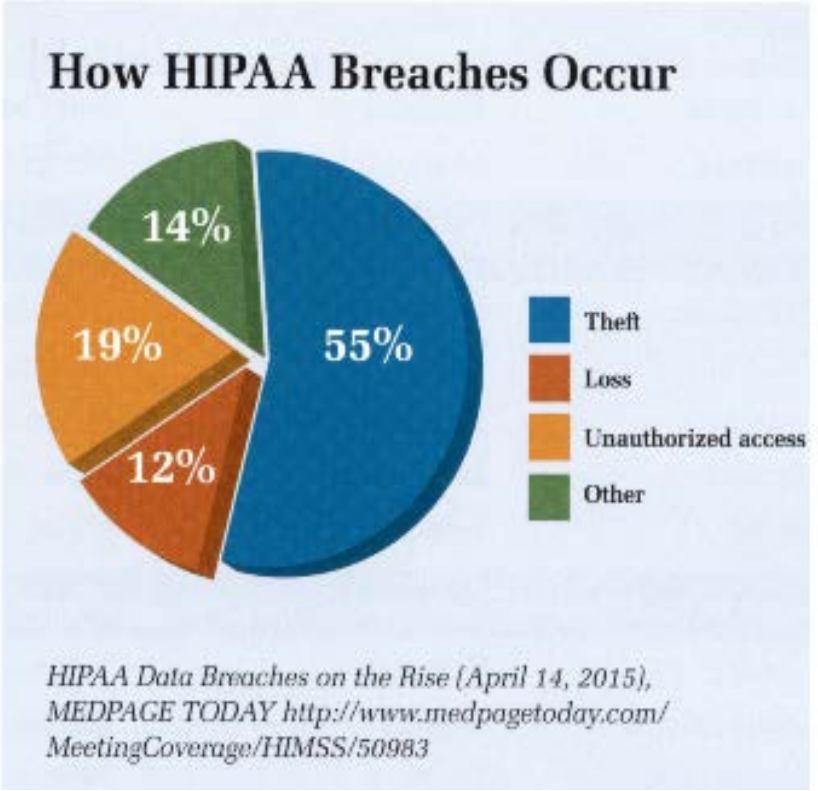
APAPO, *Good Practice*, Fall 2015

No State Breach Notification Law Applies to Psychologists				
Alabama	Kentucky	New Mexico	Ohio	South Dakota
Arizona	Maryland	North Dakota	Rhode Island	
State Breach Notification Law is Generally Satisfied by HIPAA Compliance				
Arkansas	Illinois	Mississippi	Oregon	Utah
Colorado	Indiana	Missouri	Pennsylvania	Virginia
Delaware	Kansas	Nebraska	South Carolina	West Virginia
Hawaii	Louisiana	New Hampshire	Tennessee	Wisconsin
Idaho	Michigan	Oklahoma	Texas	Wyoming
State Breach Notification Law Imposes Requirements Beyond HIPAA				
Alaska	Florida	Massachusetts	New Jersey	Washington
California	Georgia	Minnesota	New York	
Connecticut	Iowa	Montana	North Carolina	
D.C.	Maine	Nevada	Vermont	

How HIPAA Breaches Occur

APAPO, *Good Practice*, Fall 2015

- **Prevention Strategies**
  - *Train your office staff on HIPAA requirements.*
  - *Encryption on mobile devices*
  - *Limit patient information in the record.*
    - Do not include SSNs or driver's license numbers in patients' clinical records.
  - *Obtain prior consent from patients regarding when/how you will notify them if a breach occurs.*
  - *Consult with an attorney or professional liability insurance carrier.*



- Parkview Health System, Inc. agreed to settle potential violations of the HIPAA Privacy Rule with the Department of Health and Human Services (HHS) Office for Civil Rights (OCR). Parkview will pay $800,000 and adopt a corrective action plan to correct deficiencies in its HIPAA compliance program as the result of medical records dumping.
- http://www.hhs.gov/ocr/privacy/hipaa/enforcement/examples/parkview.html
- Under another DHHS settlement Affinity Health Plan, Inc. will settle potential violations of the HIPAA Privacy and Security Rules for $1,215,780. OCR's investigation indicated that Affinity impermissibly disclosed the protected health information of up to 344,579 individuals when it returned multiple photocopiers to a leasing agent without erasing the data contained on the copier hard drives. In addition, the investigation revealed that Affinity failed to incorporate the electronic protected health information stored in copier's hard drives in its analysis of risks and vulnerabilities as required by the Security Rule, and failed to implement policies and procedures when returning the hard drives to its leasing agents.

- http://www.hhs.gov/ocr/privacy/hipaa/enforcement/examples/affinity-agreement.html

MEDICAL CONFIDENTIALITY REGULATIONS SPECIFIC TO VERMONT

What Vermont Practitioners Should Know

- http://dail.vermont.gov/mandated-reporting-abuse
  - Children and “vulnerable adults”
- "Vulnerable adult" means any person 18 years of age or older who:
  - is a resident of a facility required to be licensed under VSR Chapter 69, title 71;
  - is a resident of a psychiatric hospital or a psychiatric unit of a hospital;
  - has been receiving personal care services for more than one month from a home health agency certified by the Vermont Department of Health or from a person or organization that offers, provides, or arranges for personal care; or
  - regardless of residence or whether any type of service is received, is impaired due to brain damage, infirmities of aging, mental condition, or physical, psychiatric, or developmental disability:
    - that results in some impairment of the individual's ability to provide for his or her own care without assistance, including the provision of food, shelter, clothing, health care, supervision, or management of finances; or
    - because of the disability or infirmity, the individual has an impaired ability to protect himself or herself from abuse, neglect, or exploitation.

What Vermont Practitioners Should Know

- http://www.vtlegalaid.org/sites/default/files/Protected%20Health%20Information%20-%20What%20Vermonters%20Should%20Know.pdf

- The state of Vermont provides patients with more privacy protections than HIPAA.
- Vermont law requires a patient's consent for disclosures in most situations.
- The law states that patient identification and records shall be kept confidential absent the patient's written consent or a court order.
- However, Vermont allows disclosure of information on a patient's "medical condition to the individual's family, clergy, physician, attorney, the individual's health care agent, … power of attorney, or to an interested party," "upon proper inquiry by the health care provider."

- Vermont allows disclosure of patient information without the patient's consent in certain situations. Most of these exceptions pertain to law enforcement for example, federal or state officers or their authorized agents have the power to inspect prescriptions, orders ,and records of regulated drugs
- A patient's PHI may also be disclosed when a patient communicates information to a physician in an effort to obtain a regulated drug,
- when a patient in an emergency room is suspected of drunk driving and has an elevated blood alcohol level, and in cases of the suspected abuse of a child or a vulnerable adult.

- Additionally, Vermont allows a health care provider to disclose to the Commissioner of Health incidences of disease deemed a threat to public health
- Although unemancipated minors will normally have personal representative for health care decisions
- In Vermont, minors have the right to provide their own consent to treatment for alcohol or drug dependency or sexually transmitted disease, as well as the right to consent to voluntary hospital admission for examination or treatment.
- Notification to Patients of a Privacy Breach.
- Vermont law states that health care professionals must “promptly” make an individual’s health care records available at the patient’s or the patient’s representative’s request.”
- If the medical professional fails this, he or she could be found guilty of unprofessional conduct and subject to disciplinary action.