

Ethically Navigating Clinical Practice  
& Supervision with Justice Involved  
Clients

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"These are  
my principles.  
If you don't  
like them, I  
have others."  
-Groucho Marx-

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What is ethics and  
what it is not?

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Part I

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## Ethics is NOT...

- The same as feelings
- Religion
- Following the law
- Following culturally accepted norms
- Science




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Ethics is traditionally a branch of philosophy dealing with moral problems and moral judgments.....

“Ethics is about how we meet the challenge of doing the right thing when that will cost us more than we want to pay.”  
Josephson Institute of Ethics

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## Two Key Aspects of Ethics

- The first involves the ability to discern right from wrong, good from evil, and propriety from impropriety.
- The second involves the commitment to do what is right, good and proper. Ethics entails action; it is not just a topic to mull or debate.

Taken from Maxwell, Ethics 101, p. 18

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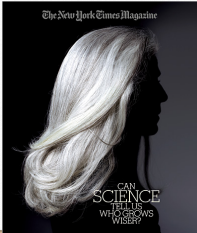
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An Image of Our Better Selves




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### 5 Sources for Ethical Standards

<b>Utilitarian Approach:</b>	• provides the most good or does the least harm
<b>Rights Approach:</b>	• best protects and respects the moral rights of those affected
<b>Fairness or Justice Approach:</b>	• ethical actions treat all human beings equally—or if unequal, then fairly based on some standard that is defensible
<b>Common Good Approach:</b>	• respect and compassion for all others—especially the vulnerable—are requirements of such reasoning
<b>Virtue Approach:</b>	• ethical actions ought to be consistent with certain ideal virtues that provide for the full development of our humanity

Vaughan, Moberg, Meyer, Shanks, McLean, DeCicca, Arino, & Hansen (2009)

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### There might be a problem...

- Do we all agree on the content of these approaches?
- Does each approach answer in exactly the same way what is ethical?

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### Values underlying ethical principles

<ol style="list-style-type: none"> <li><u>Autonomy</u> <ul style="list-style-type: none"> <li>Self-determination</li> <li>Respect dignity and worth of the person</li> <li>Recognize importance of human relationships</li> </ul> </li> <li><u>Beneficence</u> <ul style="list-style-type: none"> <li>Promote the wellbeing of clients</li> <li>Concern for welfare of clients and communities</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li><u>Non-maleficence</u> <ul style="list-style-type: none"> <li>Avoid harm</li> <li>Do no harm</li> <li>Public perception of profession</li> <li>Avoid conflicts of interest</li> <li>Integrity</li> <li>Competence</li> </ul> </li> <li><u>Justice</u> <ul style="list-style-type: none"> <li>Equal treatment</li> <li>Non-discrimination</li> <li>Respect for diversity</li> </ul> </li> </ol>
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**The More I Think  
The More Confused I Get**

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### Judging Ethical Standards

- People suffer from delusions of grandeur about their own ethical standards
- Ethical standards are not relative
- Achieve the highest good
- Ethics begins where the law ends
- Actions speak louder than words
- True standards remain constant

\* We tend to judge ourselves by our best actions and intent, and others by their worst

\* Strong personal conflicts arise when there are differences between home and workplace standards




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### Legal & Ethical Practice

Do I have a **DUTY** to do something?

Am I **DERELICT** in fulfilling that duty?

Were there any **DAMAGES** (harm) done?

And can what I did be...

- Directly connected to the damages?

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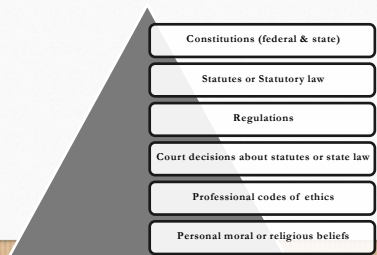
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### Hierarchy of Legal & Ethical Sources of Guidance for Clinical Practice



- Constitutions (federal & state)
- Statutes or Statutory law
- Regulations
- Court decisions about statutes or state law
- Professional codes of ethics
- Personal moral or religious beliefs

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## Basic Responsibilities

- State and provincial licensing boards enforce ethical conduct
- Abide by laws in local or state/provincial region
- For your protection:
  - Liability (purchase own insurance)
  - Ensure documentation
  - Consultation




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## Law

- The law is structured
- The law is meant to stabilize social institutions
- The law is broad
- Balance burden and benefit
- Consequences are punitive




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## Law vs. Ethics

Where the law ends is where ethics begins....

There are many things that are legal but unethical

- Evaluation at pre-adjudication stage
- Stoll defense
- How do we not mislead the trier of fact
- Percentile ranks for sex offenders

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### Who is the most ethical?

➤ Gallup poll 2014 - business executives, pharmacists, police officers, nurses, advertising practitioners, lawyers, clergy, members of congress, bankers, car salespeople, and medical doctors

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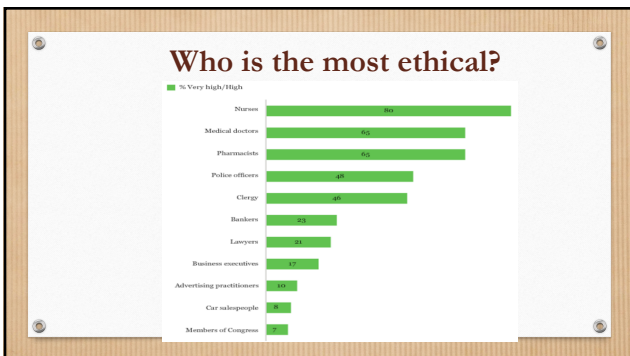
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Legal vs. Ethical Differences

➤ What do I have to do vs. what should I do




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Legal vs. Ethical Differences

➤ Legal responsibilities are driven by codes, statutes, regulations, etc.

➤ Ethical responsibilities are driven by individual guidelines vs. group (to a degree)

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Legal vs. Ethical Differences

➤ What do I have to do vs. what should I do




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### Some Legal Considerations

- What if the law and my code of ethics contradict one another?
  - No singular way to address such conflicts...
- Typically if abiding by the law, make known your commitment to the ethical code and that such activity violates one's code
- If obeying the ethics code leads to disobeying the law, seek advice (legal, licensing board)



- What if I get a subpoena for my files?
  - Ensure third parties are protected
  - Examine subpoena (for court appearance or specific documents)

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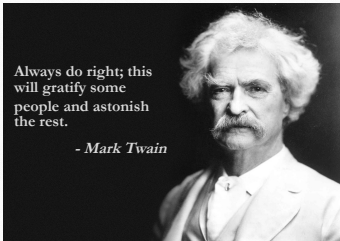
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Always do right; this  
 will gratify some  
 people and astonish  
 the rest.  
*- Mark Twain*



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What do I know about ethical practice?

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Part II



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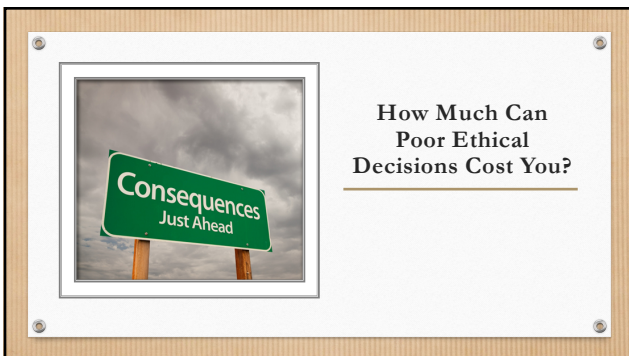
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## Sanctions

- Licensure
  - State regulatory board
- Professional organization
  - NASW/APA/ATSA
- Civil penalties
  - Lawsuits, malpractice
- Criminal penalties
  - e.g. failure to report child abuse, sexual exploitation




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What are ethical quandaries that are specific to working with Justice-Involved clients?

Part III

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## Confidentiality

According to state law and professional codes of ethics, everything discussed in the therapeutic encounter is confidential

- ⊙ Court order / third party
- ⊙ Supervision
- ⊙ Suspicion of abuse
- ⊙ Danger to self or others

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[illegible]

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[illegible]

### Vignette: Ethical Case Example

- Duty to Client or Community?

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### Exceptions to Confidentiality: Danger to Others: Duty to Warn

- Credible threat regarding an identifiable victim
- Must be reported to intended victim and authorities
- Document all communications, consultations, and rationale
- HIV/Aids

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### Duty to Warn

A study of Pennsylvania psychologists reported that 14% had a client who committed suicide while 18% had a client who had assaulted a third party (Knapp & Keller, 2004)



Tarasoff

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## What is Informed Consent?

"A person's agreement to allow something to happen that is based on a full disclosure of facts needed to make the decision intelligently; i.e. knowledge of risks involved, alternatives, etc."

- *Black's Law Dictionary*




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## Informed Consent

Verbally and in writing, usually during the first session

Any time a significant change in the treatment is contemplated, informed consent must be obtained

Consent can be:

implied - this is behavioral, e.g., a patient voluntarily undresses for examination

express - the patient gives permission orally or in writing

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## Informed Consent

- \* Should include:
  - Limits to confidentiality
  - Danger to self or others
  - Suspicion of abuse
    - Court order
    - Supervision
  - Fees, including cancellation / no show
  - Helper credentials, and approach to treatment
  - Student status




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## Informed Consent

**Psychological testing policies and purposes**

- Benefits to diagnostic issues
- Provide a baseline
- Costs

**Intimacy and Psychotherapy**

- Uniqueness of the relationship
- Boundaries and the law
- Feeling of rejection
- Benefits of keeping the relationship clear

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## Informed Consent



**Financial Policy**

Missed appointments  
Notice  
Insurance  
Phone calls  
Accumulation of fees



**Termination**

Your right to terminate  
Therapist termination  
Completion of treatment

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## Voluntariness

Consent is given freely and without undue influence, coercion, misrepresentation, fraud, or duress.

Most Justice-involved clients are non-voluntary  
*(Crime-related, Mentally Ill/PSI)*

Let clients know that participation is their choice, while acknowledging and identifying the positive and negative consequences of each alternative option

Check competence & comprehension

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Ethical Case Example:  
Confidentiality, mandatory reporting, or duty to  
warn?

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Minors


Parents may have a legal right to children's medical information


There is an ethical responsibility to obtain the minor's permission before releasing information


Right to privacy increases the chance that minors needing services will seek such services


Confidentiality is needed to build trust and must be balanced with parent(s) "need to know"


Identify who has legal custody or guardianship of the child—this is who must give informed consent

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Summary  
of legal &  
ethical  
issues for  
clinician to  
consider...


Identify the legal and clinical circumstances of the referral so you know what to ask in the informed consent


Verify there is a scientifically legitimate question


Verify there is an ethically legitimate question


Obtain informed consent (and waiver of privilege if appropriate) from guardian


Obtain permission from the attorney if one is involved


Avoid dual relationships

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## Efficacy of Treatment

- Competence
  - Having the knowledge, skills and abilities to effectively help
  - Capable of providing a minimal quality of service that is within the limits of one's training, experience, and practice
  - Is relative rather than absolute (on a continuum)
  - The standard applied is a comparison to the conduct of others in the profession ("community standards")
  - "Reasonable person"

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## Competence

- When your knowledge might be limited and you are not expert in your client's problem
- When you know that a colleague or another professional is practicing outside of their area of expertise

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## Termination Issues

- ⦿ When probation/court order ends before treatment is completed
- ⦿ When clients are compliant but not making substantial progress
- ⦿ When clients continue to struggle with compulsive behavior
- ⦿ When contracts change hands

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## Boundaries and the Use of Power

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**Professional boundaries**

Commonly accepted professional roles and practices



**Boundary violations**

The roles have changed  
Misuse of practitioner power for personal gain  
Practitioner's needs are given primacy

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## Dual Relationships


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The helper has two or more overlapping roles with the client



Boundary violations can occur when helpers have multiple personal or professional relationships with clients



Carefully weigh the risks and benefits to both the client and the helper

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### Professional Will

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- Do you have a will?
- Do you have a professional will?

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Professional Will

- Components
  - Pick an executor
  - Client records (past and present)
  - Billing and financial records (how to manage outstanding bills and transactions)
  - Patient contact and notification
  - Appointment information
  - Liability insurance information
  - Passwords, email, voicemail access, keys [office, file cabinets]

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Professional Will

- Avoid pitfalls
  - Second backup executor
  - Funds for executor
  - Personal will providing funds
  - Keep it updated
- Sample  
<http://www.apapracticecentral.org/business/management/sample-professional-will.pdf>

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Cui bono?

Does this enhance the therapy process and bring the client to wholeness and health or am I doing this because it feels good to me

Can I document what I did

Discuss the counseling issues in supervision

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### General Framework for Ethical Decision Making

1. Recognize an Ethical Issue
2. Get the Facts
3. Evaluate Alternative Actions
4. Make a Decision and Test It
5. Act and Reflect on the Outcome



Valiquet, Moberg, Weaver, Shanks, McLean, DeCenzo, Arnold, & Reardon (2000)

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### Ethical Decision-Making Worksheet

- Clearly state the problem/conflict (be sure to note ethical and legal codes specifically)
- Generate a list of possible things you might do to solve the problem/conflict
- Based on your evaluation of alternatives, select the solution or course of action that is most likely to solve the problem in the best possible way
- Create a detailed, step-by-step plan for implementing the solutions you choose, including how you would evaluate the solution's effectiveness




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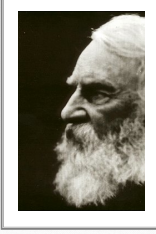
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It takes less time to do a thing right,  
than it does to explain why you did it  
wrong.

- Henry Wadsworth Longfellow



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What sorts of “cognitive maneuvers” can transform  
unethical behavior into the “ethical ideal”?

- It's not unethical as long as a managed care administrator or insurance case reviewer required or suggested it.
- It's not unethical if we can use the passive voice and look ahead.
- It's not unethical as long as no law was broken.
- It's not unethical if we can say any of the following about it
  - "What else could I do?"
  - "Anyone else would've done the same thing."
  - "It came from the heart."
  - "I went with my gut."
  - "I just knew that's what the client needed."
- It's not unethical if we have written an article, chapter or book about it.
- It's not unethical as long as no one ever complained about it.

Ethics & Malpractice, K. Pope, J. Sonme, & B. Greene, 2006

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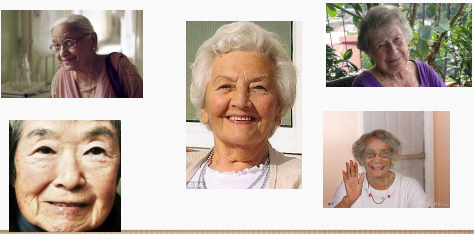
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Grandmothers across the world know  
this....



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Many hands,  
make light  
work...

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### Why do we need colleagues?

- Consultation
- Mentoring
- Instruction
- Support
  - Clinical
  - Emotional



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**KEEP  
CALM  
AND ASK FOR  
PEER  
SUPPORT**

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When in doubt,  
be human...

Karl Menninger, MD

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\*Watch your thoughts, for they become words,  
\*Watch your words, for they become actions,  
\*Watch your actions, for they become habits,  
\*Watch your habits, for they become character,  
\*Watch your character, for it becomes your destiny.



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