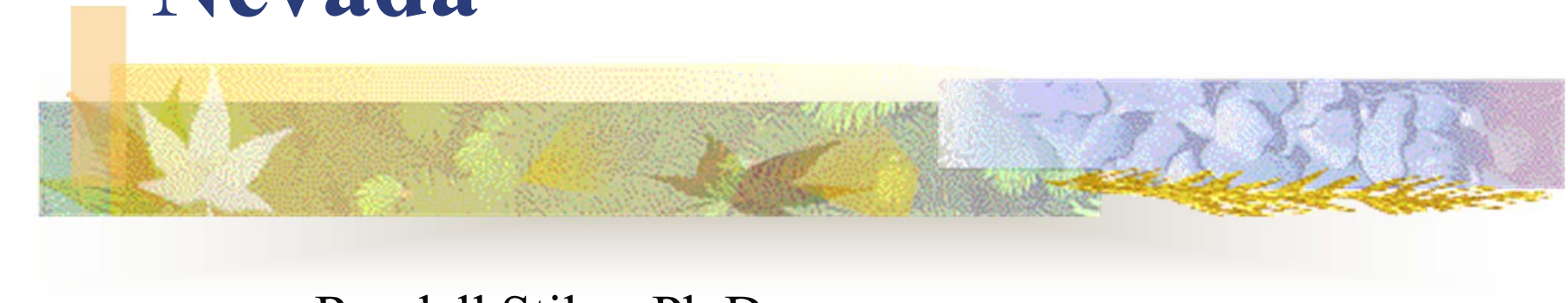
Mental Health Ethics in Nevada



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Why are we here?

- Why do we keep needing ethics trainings?
- Some aspects of mental health ethics are easy to learn and apply (confidentiality, record keeping, practicing in area of competence)
- Other aspects are difficult to define and apply in individual situations.
- Some ethical standards change. How would this happen?

What we'll do today

- Review where ethical standards come from.
- Discuss the evolving nature of ethics.
- Discuss more difficult dilemmas using examples and decision-making models that apply to all ethical decision-making
- Discuss four major areas of ethical guidelines.
- Apply ethics to digital communication.
- Review Nevada Medicaid-specific guidelines.

Sources of Ethical Guidelines

- APA Ethical Principles (2016)
- NASW Code of Ethics (2017)
- AAMFT Code of Ethics (2015)
- NRS 49 (Privilege: Psychology, MFT, CPC, SW)
- NRS 200 (Elder/Vulnerable Person Abuse/Neglect)
- NRS 432B (Child Abuse/Neglect)
- NRS 629 (Healthcare records, Duty to Warn)
- NAC 641 (Psychologists, MFTs, Social Workers)
- HIPAA Act of 1996
- Nevada Case Law

APA Ethical Principles

- **Preamble/General Principles**
  - Beneficence and Nonmaleficence
  - Fidelity and Responsibility
  - Integrity
  - Justice
  - Respect for People's Rights and dignity

APA Ethical Principles (cont.)

Ethical Standards

1. Resolving Ethical Issues
2. Competence
3. Human Relations
4. Privacy and Confidentiality
5. Advertising/Public Statements
6. Record Keeping/Fees
7. Education/Training
8. Research
9. Assessment
10. Therapy

NASW Code of Ethics

- Purpose
- Ethical Principles
  - Service
  - Social Justice
  - Dignity and Worth of the Person
  - Importance of Human Relationships
  - Integrity
  - Competence

NASW Code of Ethics (continued)

- Ethical Standards
  - Social Workers' Ethical Responsibility to Clients
  - Social Workers' Ethical Responsibility to Colleagues
  - Social Workers' Ethical Responsibility in Practice Settings
  - Social Workers' Ethical Responsibility as Professionals
  - Social Workers' Ethical Responsibility to the Social Work Profession
  - Social Workers' Ethical Responsibility to the Broader Society

AAMFT Code of Ethics

- Preamble
  - Honoring Public Trust
  - Commitment to Service, Advocacy and Public Participation
  - Seeking Consultation
  - Ethical Decision-Making
  - Binding Expectations
  - Resolving Complaints
  - Aspirational Core Values

AAMFT Code of Ethics

- Ethical Standards
  - Responsibility to Clients
  - Confidentiality
  - Professional Competence and Integrity
  - Responsibility to Students and Supervisees
  - Research and Publication
  - Technology-Assisted Professional Services
  - Professional Evaluations
  - Financial Arrangements
  - Advertising

Nevada Revised Statutes

- Contain more specific definitions and guidelines written in legal terms.
- Apply to practitioners in Nevada.
- May differ from laws in other States.

NRS 49

- Privilege is granted to a **client,** not a therapist.
- NRS 49 has separate sections for Psychologists, Social Works, Marriage and Family Therapists, Clinical Professional Counselors, and other professions, but uses identical language for each, except for the italicized phrase (only mentioned in the psychologist and physician/dentist sections).
- "A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between the patient and the patient's Psychologist [MFT/Social Worker] or any other person who is participating in the diagnosis or treatment under the direction of the psychologist [MFT, Social Worker], *including a member of the patient's family*.

NRS 200

- Definitions and penalties for abuse/neglect of:
  - Older person (60 years and older)
  - Vulnerable person (developmental, mental, physical incapacitation)
  - Children (under 18 years)

NRS 432B

- Definitions of Child Abuse/Neglect (432B.020)
- Mandated reporter laws (432B.121)
- Immunity from liability for “good faith” mandated report
- Failure to report (432B.240)

NRS 629

- Healthcare records
- Records retention
  - At age 23 or 5 years after the records are produced, whichever is longer.
- Client access to records
  - Client has access to full file (629.021)
- Duty to Warn (629.550)

NRS 641, 641A, 641B, 641C

- Legislative laws pertaining to the practice of Psychology (641), Marriage and Family Therapy (641A), Social Work (641B), and Alcohol, Drug and Gambling Counselors (641C)
- Outlines complaint process, discipline, hearings.
- Authority over licensed practitioners only, not unlicensed.
- Protects public from:
  - Unqualified persons
  - Unprofessional conduct

HIPAA

- Health Insurance Portability and Accountability Act (1996)
- Designed to make health insurance portable through job and residence changes. Includes provisions for protecting confidential client information, called protected health information (PHI)
- HIPAA rules generally satisfied by normal confidentiality guidelines contained in ethical codes.
- Security rule deals with physical security of PHI (office, computer security), privacy rule deals with release of PHI.
- Conflict between HIPAA and State Law:
  - Whichever rule is stricter is enforced
  - Ex. Child can deny access of records to parents if parents consent to this, per HIPAA.
  - Case notes are health care records per NRS 629.021 but not per HIPAA.

Evolving Nature of Ethics

- Changing cultural values
- New situations (technology)
- Pope and Vasquez (1998, xiii-xiv)

"Ethics codes cannot do our questioning, thinking, feeling, and responding for us. Such codes can never be a substitute for the active process by which the individual therapist or counselor struggles with the sometimes bewildering, always unique constellation of questions, responsibilities, contexts, and competing demands of helping another person…Clinicians confront an almost unimaginable diversity of situations, each with its own shifting questions, demands and responsibilities…Ethics that are out of touch with the practical realities of clinical work, with the diversity and constantly changing nature of the therapeutic venture, are useless."

Ethical Dilemmas

- Ethical dilemmas are situations where there are reasons for different actions, but no actions are completely satisfactory.
- In these cases, we can consult general principles such as the APA General Principles we've already covered:
  - Beneficence and Nonmaleficence: promote good and do no harm
  - Fidelity and Responsibility: Be loyal to your promises and take responsibility.
  - Integrity: Honesty
  - Justice: Fairness
  - Respect for People's Rights and Dignity: privacy, confidentiality and self-determination

Decision-making models

1. Identify the problem or dilemma
2. Identify the potential issues involved
3. Review the relevant ethical guidelines
4. Obtain **consultation**
5. Consider possible and probable courses of action
6. Enumerate the consequences of various decisions
7. Decide on what appears to be the best course of action

(Corey, Corey and Callahan, 1993)

Once a decision is made, **DOCUMENT** the reasons for the decision. Legal liability is reduced when we document our decision-making process and act in good faith.

Primary Ethical Issues

- Informed Consent
- Competence
- Confidentiality
- Dual/Multiple Relationships

Informed Consent

- Must take into account client ability to understand and to make voluntary decisions based on age, intellect and mental health (is the client able to be reliably "informed" and are they capable of giving "consent?")
- More than a form to be signed.
- It's an **ongoing process** throughout treatment, to allow clients:
  - To be informed about **what therapy is**
  - To make voluntary decisions whether to participate
  - To understand **risks and benefits** of therapy
  - To understand **alternatives** to therapy

Competence

- To accept a client, we declare ourselves competent
- Licenses outline the scope of your *potential* competency
- If questioned, we defend our competence through:
  - Formal training
  - Supervised experience
  - Continuing education *maintains* competence generally, does not usually *establish* competency.

NASW Competence guideline

1.04 Competence

(a) Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

(a) Social workers should provide services in substantive areas or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation, and supervision from people who are competent in those interventions or techniques.

Supervision vs. Consultation

- Administrative vs. clinical supervision
- Supervisors may supervise non-competent people (non-licensed interns) and accept liability for their work.
- Consultation is sought by someone who declares themselves as *competent*, but desires to be more *expert* (competent < expert)
- Consultants should document questions and responses to limit liability
- Consultants do not accept liability for the work of those they consult with.

Competence (cont.)

- Competence includes emotional and physical factors that may change day to day.
- Emotional Competence is:

"[the] therapist's ability to emotionally contain and tolerate the clinical material that emerges in treatment, their willingness and skill at detecting the intrusion of personal biases into their work, and their capacity for self-care in the context of the difficult work of psychotherapy."

(Kocher and Keith-Spiegel, 2008, p. 71)

Ethics of Self-Care

- NASW: (a) Social workers should not allow their own personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties to interfere with their professional judgment and performance or to jeopardize the best interests of people for whom they have a professional responsibility.
- Impaired provider of services
- Supervisor responsibilities
- Therapist responsibilities
- Self-evaluation

Confidentiality

- APA: "Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium."
- NASW: "Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons."
- Privilege: resides with *client.*
- Limits to confidentiality:
  - Harm to self/others
  - Child/Elder abuse (as we discussed, only report maltreatment to CPS, not other clinical information)
  - Court order/subpoenas (see slide)
  - Release of information given by client
  - Identifying information is removed and reason to share information is compelling (e.g. training).
  - Duty to Warn (added to NRS in 2015) (next slide)

Duty to Warn in Nevada

NRS 629.550 Duty to apply for emergency admission to mental health facility of patient who communicates certain threats or to make reasonable effort to timely communicate threats to certain persons…

1. If a patient communicates to a mental health professional an **explicit threat of imminent serious physical harm or death** to a **clearly identified or identifiable person** and, in the judgment of the mental health professional, the patient has the **intent and ability to carry out the threat,** the mental health professional shall apply for the **emergency admission of the patient** to a mental health facility pursuant to NRS 433A.160 **or make a reasonable effort to communicate the threat in a timely manner** to:

(a) The **person who is the subject of the threat;**

(b) The **law enforcement agency** with the closest physical location to the residence of the person; and

(c) **If the person is a minor, the parent or guardian** of the person.

Subpoenas

- What do you do when you get a court subpoena?
- What are the ethical responsibilities regarding subpoenas?

Confidentiality and Information Technology

- Email
  - DCFS Policy “secure email”
  - Discuss email security with clients and document client communication preferences.
  - All emails are part of the client’s record. Print and put in file.
- Texting
  - Cellphone security issues
  - Scheduling/cancellation information, updates?
  - Informed Consent to text
- Social Media Issues
  - Friending, following, etc.

Information and Technology - Dilemma

The safety plan for Wade's adolescent client dictated that she call Wade, a private practitioner in La Plata, MD, whenever she felt like cutting herself. But instead of calling, the client kept texting Wade. When Wade responded by calling the client back to try to de-escalate the situation, the girl would hang up on Wade, insisting she didn't want to talk. The client would then explain the whole situation via text. "I clearly had an ethical obligation to communicate with her, [but] I needed to do it in a way that she was going to be receptive to," says Wade, a member of the American Counseling Association who also works in a group counseling practice and is working toward her doctorate. "We had a discussion about the lack of confidentiality regarding [texting] and my uneasiness about it, but the fact of the matter was, I had to do what was in the best interest of my client. And in that situation, it was to text and calm her down that way."

Counseling Today (Oct 2011) "Finding Technology's Role in the Counseling Relationship."

Multiple Relationships

APA Guideline on Multiple Relationships:

3.05 A psychologist refrains from entering into a multiple relationship if the multiple relationship could **reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness** in performing his or her functions as a psychologist, or otherwise **risks exploitation or harm** to the person with whom the professional relationship exists.

ACA Guidelines A.5.c., p. 5

Counselor-client **nonprofessional relationships with clients, former clients, their romantic partners, or their family members should be avoided,** except when the interaction is **potentially beneficial to the client.**

(If counselors decide to engage in such multiple relationships, they must **document the rational, potential benefits and consequences** before providing services)

Multiple Relationships (cont.)

- Common areas of licensing board complaints and lawsuits related to multiple relationships include:
  - Sexual relationships (current or former)
  - Business relationships
  - Out of office contact

Multiple Relationships (cont.)

- "The entire discussion of dual (multiple) relationships is subtle and complex, defying simplistic solutions or absolute answers"

  (Corey, Corey &Callahan, 1993, p. 142)
- Kitchener (1988) warns of three possible areas of problems arising from multiple relationships:
  - Different expectations between different roles
  - Different obligations between different roles
  - Different levels of power and prestige of therapist and client affecting multiple relationships

Multiple Relationships (cont.)

- Questions to ask when considering whether to engage in multiple relationships:
  - Is it necessary?
  - Is it exploitative?
  - Who does the relationship benefit?
  - Could it be damaging to the client?
  - Could it disrupt the therapeutic relationship?
  - Am I being objective in my evaluation of the matter?
  - Have I adequately documented the decision making process?
  - Did the client give informed consent regarding the risks to engage in the dual relationship?

(Ashby: Ethics 2.0 When Clinical Goes Digital, 2017)

Casenotes

1. **What is a Progress Note:** Documentation of progress or lack of progress.

2. **Reasons for keeping progress notes:**

- A record of the client's treatment.
- Court system
- Serves as a reminder to ourselves
- Evidence of treatment efficacy for 3rd party payers such as Medicaid?
- Protection in a law suit?
- Becomes a legal record
- The case may transfer from one program to another or from one clinician to another.

Casenotes

3. Documentation in general
   - Who has access?
   - How much to write
   - CPS call in reports

Casenote scenario

- Mary, 14 years old and her mother come in together to discuss Mary's written narrative that she's been working on for 3 sessions telling the story of her sexual abuse that occurred when she was 8 years old. Mary reads her story and cries while reading it. Mom cries and Mary then comforts mom, which makes mom cry even harder. You, the therapist remind mom of your prior discussion emphasizing the importance of being supportive to Mary. Mom recovers and begins to listen carefully and respond with reflective comments to Mary. Mary finishes and says she feels relieved. Mom looks to you with eyes indicating there is something she needs or has to say. Once you've wrapped up with Mary you ask her to wait in the lobby while you finish with mom. Mom cries and talks about her own guilt and sexual abuse when she was a child.

Medicaid-Specific Guidelines

There are 7 requirements with which all providers must comply. They are:

1. Provide **medically necessary services;**
2. Comply with **federal and state laws and regulations (NRS, HIPAA)**
3. **Scope of practice (Competence)**
4. Provision of **care coordination** for recipients with higher intensity of needs;
5. **Client records;**
6. Cooperation with DHCFP **reviews and audits;** and,
7. Utilize **clinical supervision** as prescribed in MSM 400 and have written policies and procedures to document the process to ensure clinical supervision is performed on a regular, routine basis at least monthly and the effectiveness of the mental health treatment program is evaluated at least annually

Medicaid: Medical Necessity

Each Medicaid Services Manual (MSM) chapter describes and defines what is required to meet the threshold for **medical necessity** for each Medicaid covered service.

For a simple example, the first threshold of medical necessity for children is that the child has an **Axis I DSM or DC:0-5 diagnosis.**

There are typically many elements which support medical necessity and each is found in the applicable MSM chapter.

Medicaid: Compliance with Federal/State Laws and Regulations

All Medicaid providers are required to comply with:

- *All* federal and state regulations and confidentiality laws *;
- The Health Insurance Portability and Accountability Act (HIPAA);
- Client's rights; and,
- Requests from QIO-like vendor and Medicaid fiscal agent.

All compliance requirements are located in MSM 100 and 3100 as well as all applicable chapters. Medicaid providers are required to review these regularly or when questions arise.

Medicaid: Scope of Practice

Medicaid providers are required to provide services within their legal *scope of practice.*

This is an issue about which your supervisor is responsible for monitoring and will make him/herself available for supervisory consultation with you on a regularly scheduled basis (i.e., at least once every 30 days) or as the need arises.

Medicaid: Records

Medicaid providers are required to maintain client records, including billing records. Providers are also required to document the medical necessity in the client record in addition to all covered and non-covered services they have provided.

Medicaid: Supervision

- Must be a QMHP
- Must assure the services provided are medically necessary and clinically appropriate
- Assume professional responsibility for the services provided

Medicaid: Supervision (cont.)

Clinical Supervisors must ensure:

- Client records are **current w/in 30 days**
- **Comprehensive assessment** is completed prior to provision of services
- A **comprehensive and progressive plan** is developed and approved by Clinical Supervisor
- **Goals and objectives**
- **Recipient/legally responsible person participation**
- Written **Freedom of Choice**
- **Scope of practice**
- Services are provided in a **safe and efficient manner**

Review

- So hopefully you have a better idea of:
  - Where **ethical standards** come from.
  - Why ethical standards sometimes **evolve.**
  - Know how to resolve difficult **dilemmas**.
  - Feel comfortable with issues of **informed consent, competence, confidentiality, and multiple relationships**
  - Understand the pitfalls of **digital communication.**
  - Know what to write and not to write in a **case note.**
  - Know what **Medicaid** requires in their Medicaid Services Manuals.

- **QUESTIONS**

Thank you!

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