



# Professional Ethics: Operating in an Ethical Vacuum

Kate Speck, PhD MAC, LADC

# Objectives

- Review the Ethical Code
- Review the Responsibility of Ethical Committees/State Licensure Boards
- Discuss Self Disclosure as component of ethical practice

# ETHICS Encompasses Many Life Areas

Good

Injustice

Mistrust

Death

Ambivalent

concern

code

ETHICS

philosophy

morals

wrong  
right

choices

question  
?

dilemma

good  
bad

# The Ethical Code



- Provide framework for ethical behavior
- Set standards for practice
- Protect clients, communities, and the profession
- Establish principles guiding behavior
- Are intentionally not specific
- Are not law -- they are created and followed voluntarily

# Major Ethical Codes:

- American Counseling Association
- ASCA, AMHCA and several ACA divisions/partners
- NASW
- AAMFT
- American Psychological Assoc
- APsyA (American Psychiatric)
- Most codes are similar in content

# Functions of Ethical Code

First and most important – to *safeguard welfare of client and society*

Define ethical conduct in a profession – to inform and educate members

Define Standards of Practice – important in legal actions

Create a means by which members are held accountable for actions – protecting public

Offer a way to promote professional growth, best practice

# The Ethics Committee



- Major organizations have ECs
- Serve as adjudicators of suspected ethics violations
- Funded by organization's that created them
- No force of law
- Do not process state licensure law violations

# Ethics Committee Procedures

- Step 1: work out with violator if possible
- Step 2: Contact ethics committee

Committee investigates:

- Obtains written and oral evidence
- Meets to consider evidence
- May conduct hearings with involved parties

Process may go from weeks to more than a year




# Committee Case Disposition Options



- No violation
- No violation with conditions
- Warning
- Reprimand
- Censure
- Probation
- Suspension
- Membership revocation (usually w/transmittal to state licensure board)

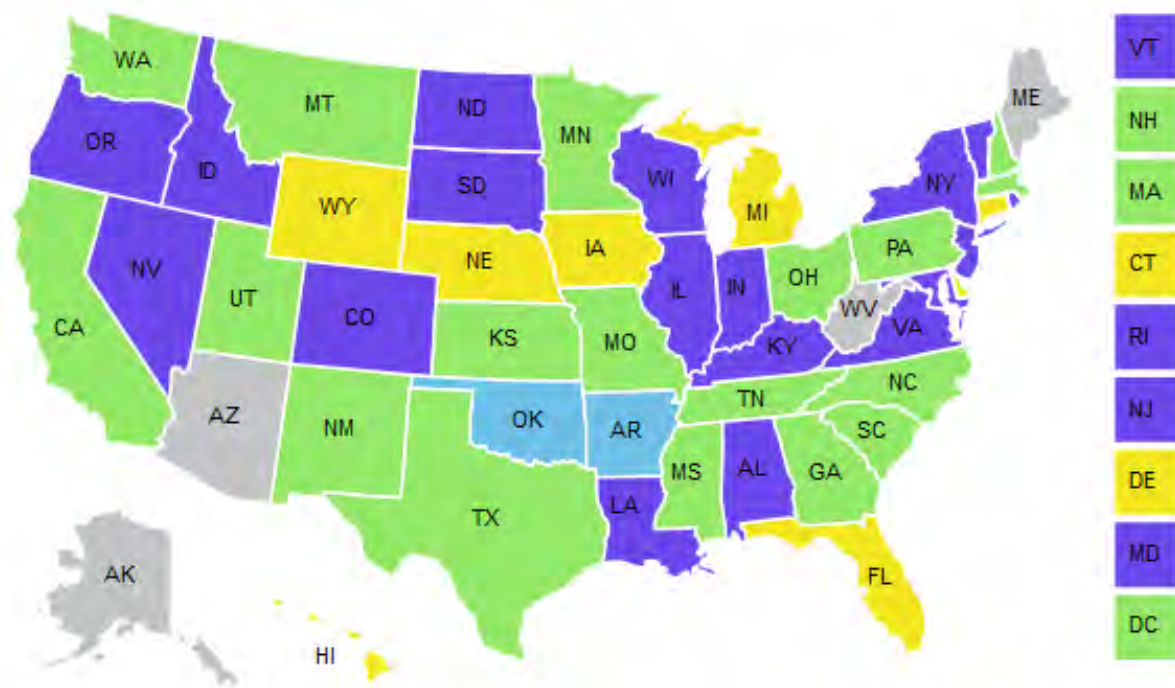
# State Board Procedures

- Complaints filed through state attorney general
- Investigation procedures as as for ethics committees
- Case dispositions same as for state ethics committees, except:
  - Delicensure instead of expulsion
  - Board notifies professional organizations



**Disclosure of Substance Abuse  
Records With Patient Consent: 50  
State Comparison**

This comparative map shows requirements for the disclosure of substance abuse patient records with patient consent in all 50 states plus the District of Columbia as compared to 42 CFR Part 2. The map shows if a state has stricter requirements than Part 2 (the state has requirements for consent in addition to those required by Part 2) or the same as Part 2 (the state incorporates Part 2 by reference or has requirements identical to Part 2). The map also shows whether a state has fewer requirements for consent than Part 2; where a state's requirements are less strict than Part 2, the Part 2 would supersede the state's requirements. A final category shows states that have requirements applicable only to entities not governed by Part 2 (e.g., programs that are not federally assisted). States with these laws often also have laws relating to Part 2 entities, which may be the same, stricter, or less stringent than Part 2 requirements. Details of the requirements for disclosures are included in the details below and in the summaries of individual state laws.



*Click on a state to see more information on **Privacy and Confidentiality** in that state*

### State Consent Requirements for Disclosure of Records as Compared with Part 2

- Stricter than Part 2
- Same as Part 2
- Less strict than Part 2/Part 2 Controls
- No law specifying consent requirements; Part 2 controls
- State has separate requirements for entities not governed by Part 2

# Ethics and Law

## Governing our Professional Practice

Law	Ethics
Created by legislature and courts	Rooted in philosophy, created by professional associations
Govern citizens (federal, county, state)	Govern members of profession – guide practice
Represent <i>minimal</i> standards	Represent <i>ideal</i> standards
Penalty → fines, jail	Penalty → loss of license, professional sanctions

# Criminal vs Civil Law

**Criminal** → Go to Jail, associated professional sanctions  
Example: Sexual contact with client is a  
Felony 4<sup>th</sup> Degree

**Civil** → Monetary consequences, associated professional sanctions

Malpractice door opens when it can be proven that the counselor/therapist had:

- 1) A duty
- 2) Duty was breached
- 3) Client experienced damage
- 4) Breach of duty that caused the damage

# When Questions of Law Arise



Consider it to be a legal issue if...

- \*lawyers are involved
- \*the matter has come to court,
- \*the counselor may be in danger of being accused of misconduct

Avoid being impulsive; take time to think before reacting (e.g. receipt of subpoena)

Talk to an attorney (American Counseling Association) when it is, or might be a legal issue to determine your next appropriate action



- **If obeying your code of ethics means breaking the law, you have to get advice from an attorney.**
  - **e.g. confidentiality and response to subpoena**
- **Counseling minors may raise conflict between ethical and legal responsibilities**



# When Ethics and Law Collide

## H.1.b. Conflicts Between Ethics and Laws

If ethical responsibilities conflict with governing legal authority, counsel to the ACA Code of Ethics and take

If the conflict cannot be resolved by adhere to the requirements of law legal authority.

*ACA Code of Ethics (2005)*

Legal responsibility to report child abuse

VS

ethical responsibility to maintain confidentiality

In work with minor in school setting, child's right to confidentiality vs parent's right to know

# 42 CFR Part 2

- HIPAA - Health Insurance Portability and Accountability Act of 1996 (HIPAA), the law that regulates the use and disclosure of Protected Health Information (PHI) held by "covered entities" such as health plans.
- But far fewer are familiar with the special privacy protections afforded to alcohol and drug abuse patient records by 42 Code of Federal Regulations ("CFR") Part 2.



# 42 CFR Part 2

- Protected Information - 42 CFR Part 2 - any information disclosed by a covered program that
  - identifies an individual directly or indirectly as having a current or past drug or alcohol problem, or
  - as a participant in a covered program.
- With limited exceptions, 42 CFR Part 2 requires 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.**

# Using Informed Consent



An opportunity for building foundations for a truly collaborative and effective counseling relationship - defines the relationship

Promotes idea of clients as informed partners in the counseling process – they know the rules and participate willingly

As important with children as with adults

Beginning and throughout the relationship – written and discussed

# Updating 42 CFR Part 2 Rules

- Increase opportunities for individuals with substance use disorders to participate in new and emerging health and healthcare models and health IT;
- Facilitate the sharing of information within the health care system to support new models of integrated healthcare;
- Improve patient safety while maintaining or strengthening privacy protections for individuals seeking treatment for substance use disorders
- Decrease burdens associated with several aspects of the rule, including consent requirements - required the patient to consent every time their data was shared or accessed

## Background on 42 CFR Part 2

- Applies to federally assisted “alcohol and drug abuse” programs.
- Patient consent must be obtained before sharing information from a program that is subject to 42 CFR Part 2.
- Once this information has been disclosed, no re-disclosure is permitted without the patient’s express consent to re-disclose or unless otherwise permitted under Part 2.



# Background on 42 CFR Part 2

- Limited exceptions for disclosure without consent:
- Medical emergencies
  - Scientific research
  - Audits and evaluations
  - Child abuse reporting
  - Crimes on program premises or against program personnel
  - Court order
  - Communications with a qualified service organization (QSO) of information needed by the organization to provide services to the program

# Why Revise the Current Regulations?

- Regulations first promulgated in 1975 and last substantively updated in 1987.
- Significant changes have impacted health care delivery since then.
  - New models of integrated care that rely on information sharing to support coordination of patient care
  - Electronic infrastructure for information exchange
  - New focus on performance measurement
- Concerns expressed about barriers to research.



# Why Revise the Current Regulations?

- Breach of privacy of information protected by Part 2 can still lead to civil and criminal consequences for patients.
  - Loss of employment, housing, child custody
  - Discrimination by medical professionals and insurers
  - Arrest, prosecution and incarceration
- Modernize the regulations and make them more understandable and less burdensome.

# FINAL RULE: February 17, 2017

- **1. To Whom**
  - Many changes
- **2. From Whom**
  - retains the less stringent requirements of the existing rule.
- **3. Re-disclosure Prohibition**
  - **Slight Modification – only patient identifying information**
- **4. Medical Emergencies**
  - More expansive
- **5. Research**
  - **Aligns with HIPPA and Common Rule – still more restrictive**
- **6. Patient Identifying Information**
  - Aligns with HIPPA – BUT no re-disclosure
- **7. Qualified Service Organization (QSO)**
  - Narrows the ability to use the QSO arrangement
- **8. Other Consent Provisions**
  - clarifies consent may extend for a period of time or expiration of an event
- **9. What Was Not Included**
  - rule does not align permitted disclosures with HIPAA

# Confidentiality/Privacy



# Challenges in Confidentiality

Subpoenas

Counseling Minors

Substance abuse

Group/Family Counseling

Offenders

After Death of Client

Technology

# Ethical And Legal Considerations



## Communication Doesn't Apply

- When the counselor is performing a court ordered evaluation.
- When the client is suicidal.
- When the client abuses the counselor.
- When the client uses a mental disorder as a legal defense.
- When a teenage child is being abused.
- When a client discloses an intent to commit a crime or is dangerous to others.
- When a client needs hospitalization.

# Ethical And Legal Considerations

## Legal Issues and Managed Care

- Counselors have the duty to appeal adverse decisions regarding their client(s).
- Counselors have a duty to disclose to clients regarding the limitations of managed care and the limits of confidentiality under managed care.
- Counselors have a duty to continue treatment and are not supposed to “abandon” a client just because the client does not have the financial means to pay for services.



# Ethical And Legal Considerations

## Malpractice

- When a counselor fails to provide reasonable care or skill that is generally provided by other professionals and it results in injury to the client.
- **Four conditions must exist:**
  - The counselor has a duty to the client.
  - The duty of care was not met.
  - The client was injured in the process.
  - There was a close causal relationship between the counselor's failure to provide reasonable care and the client's injury.

# Ethical And Legal Considerations

## Suggestions on Avoiding Malpractice

Precounseling: Make sure to cover all information regarding:

- The financial costs of counseling.
- Any special arrangements.
- The competencies of the counselor.
- Avoid dual relationships.
- Clearly indicate if a treatment is experimental.
- Identify limits to confidentiality.
- Help the client make an informed choice.





# Ethical And Legal Considerations

## Suggestions on Avoiding Malpractice

### Ongoing Counseling:

- Maintain confidentiality.
- Seek consultations when necessary.
- Maintain good client records.
- Take proper action when a client poses a clear and imminent danger to themselves or others.
- Comply with the laws regarding child abuse and neglect.

# Ethical And Legal Considerations

## Termination of Counseling:

- Be sensitive to the client's feelings regarding termination.
- Initiate termination when the client is not benefiting from services.
- Address the client's post-terminations concerns.
- Evaluate the efficacy of the counseling services.

# Ethical And Legal Considerations

## Ethical Issues

- Ethical codes are not set in stone. They serve as principles upon which to guide practice.
- There are two dimensions to ethical decision making:
  - Principle ethics: Overt ethical obligations that must be addressed.
  - Virtue ethics: Above and beyond the obligatory ethics and are idealistic.





# Four fundamental ethical principles

A Quick Review

# The Principle of Respect for Autonomy (human dignity)

- **Autonomy is Latin for "self-rule"**
- We have an obligation to
  - respect the autonomy of other persons, which is to respect the decisions made by other people concerning their own lives.
  - It gives us a negative duty not to interfere with the decisions of competent adults, and a positive duty to empower others for whom we're responsible.

**Corollary principles: honesty in our dealings with others & obligation to keep promises.**

# The Principle of Beneficence

- We have an obligation to make it the aim of all our actions.

Corollary principle?

- .... We must take positive steps to prevent harm.
- However, adopting this corollary principle frequently places us in direct conflict with respecting the autonomy of other persons.



DO  
Good!!

# Beneficence

Counselor's responsibility – *duty* - to promote and to contribute to the welfare of the client.

M  
to  
M

**To Do *Good***

also  
ster-

First priority, do no harm, second priority is to do good – client should be better at end of relationship than at the beginning

# The Principle of Non-maleficence



- **Malfeasance** - a technical legal term

illegal or dishonest activity by a public official or a corporate officer

- **Nonmalevolence**

which means

We have an obligation

“First,  
do no harm.”



# The Principle of Nonmaleficence



Corollary principle 1: Where beneficence and non-maleficence conflict, we are obligated to minimize the harm.

Corollary principle 2:

Corollary principle 3: Beneficence is not used for good.

Combining beneficence and non-maleficence: We must act so as to produce more good than harm.

“First,  
do no harm.”

# The Principle of Justice

- We have an obligation to provide others with whatever they are owed or deserve. We have an obligation to treat all people equally, fairly, and impartially.

**Corollary principle: Impose no unfair burdens.**

Combining beneficence and justice: We are obligated to work for the benefit of those who are unfairly treated.

- In the *Apology*, Socrates says that a man worth anything at all does not reckon whether his course of action endangers his life or threatens death. He looks only at one thing — whether what he does is just or not, the work of a good or of a bad man



# Fidelity

*Loyalty & Honor to Commitments Made*

Creating a therapeutic climate in which trust can flourish makes client growth and progress possible

Promises made in good faith and kept

Obligations met



# Ethical Aspects of Self-Disclosure

Or... Just when is it TMI ?

# What is Self-Disclosure??

- **Self-disclosure** is a process of communication through which one person reveals himself or herself to another.
- It comprises everything an individual chooses to tell the other person about himself or herself, making him or her known.
- The information can be descriptive or evaluative and can include thoughts, feelings, aspirations, goals, failures, successes, fears, dreams as well as one's likes,



# What is Self-Disclosure??



- According to [social penetration theory](#), there are two crucial dimensions to self-disclosure:
- **Breadth-** The range of topics discussed by two individuals is the breadth of disclosure. It is easier for breadth to be expanded first in a relationship because of its more accessible features; it consists of
  - outer layers of personality and everyday lives, such as occupations and preferences.
- **Depth** - The degree to which the information revealed is private or personal is the depth of that disclosure
  - Depth is more difficult to reach, given its inner location; it includes painful memories and more unusual traits that we might try to hide from most people.

# Relevant Ethical Principles



- In considering ethical aspects of self-disclosure, we should identify the most relevant principles, which are:
  - Beneficence (doing good for the patient)
  - Non-maleficence (doing no harm)
  - The fiduciary relationship between clinician and patient, where the interests and welfare of the patient always predominate

# Self-disclosure - personal

- Self-disclosure is an important building block for intimacy; intimacy cannot be achieved without it. We expect self-disclosure to be reciprocal and appropriate.
- Self-disclosure can be assessed by an analysis of cost and rewards which can be further explained by social exchange theory.
- Most self-disclosure occurs early in relational development, but more intimate self-disclosure occurs later.



# Informal Discussion (aka Chat)

- To what extent did the counselor speak with the client about topics that were *not related* to the problems for which the client entered treatment or make self-disclosures unrelated to the counselors' experiences with recovery?

(Martino et. al., 2009)

# How often did informal discussion occur? (736 MI and MET sessions rated)

- 42% of all rated sessions
- On average, discussions occurred once or twice per session
- 68% of counselors had informal discussions 3 or more times in at least one of their sessions
- 20% of counselors initiated informal discussions in 75% or more of their sessions

(Martino et. al., 2009)

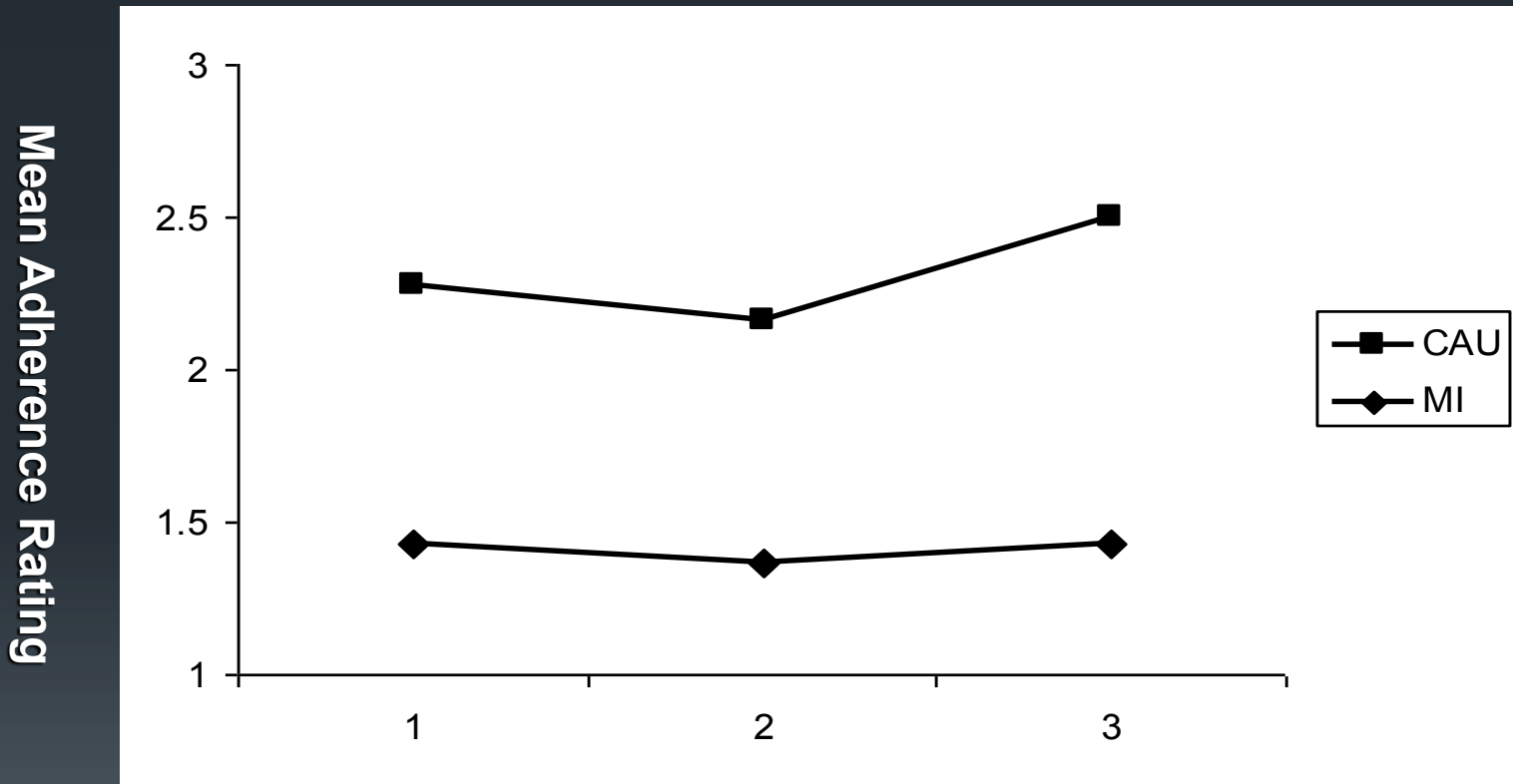


• Relational ful

• Distracting

*To chat or not to chat*

# Informal Discussion across 3 MET Sessions



Session Number

(Martino et. al., 2009)

# Self-disclosure - Professional

- **Self-disclosure manifests itself in 3 major forms in actual clinical practice.**
  - One form is inevitable self-disclosures – Many occur with no possibility of avoiding them
  - Some disclosures may be unconscious.
  - Accidental self-disclosures are extra-therapeutic encounters,
    - slips of the tongue,
    - public notices of lectures,
    - obituaries, and so on.
  - Personal aspects of the therapist's life come to light because the therapist calls a patient by another patient's name, a newspaper prints an obituary of the therapist's spouse, or the therapist is seen entering a place of worship.

# Intentional self-disclosures

- Typically occur during therapeutic sessions.
- Disclosures may be clinically based and therapeutic, supportive and alliance-building; or they may be seductive, exhibitionistic, care-seeking, and the like.
- Social networking systems (eg, Facebook, (1 B) Twitter, Google+ (500M), etc. ) exemplify intentional self-disclosure without a particular patient focus.
- Internet search engines (eg, Google, LexisNexis) may allow unintended disclosure of personal details of the therapist's life.
- *Everything a therapist does or does not say is a disclosure, but not necessarily an inappropriate one.*<sup>1</sup> – by Thomas G. Gutheil, MD

# A critical criterion

- **CONTEXT** is the most important determinant in assessing the appropriateness and ethical valence of self-disclosure.
  - First, different schools of therapeutic practice may have different teachings about self-disclosure; classical psychoanalysis, client-centered therapy, existential therapy, and reality therapy may place different weights on the therapist's transparency.
  - Second, different patients with different diagnoses, as well as the same patients at different stages of therapy, may require different decision making about self-disclosure.
  - Third, the therapist's motivation and intent are critical factors in weighing the ethical force of self-disclosure, particularly whether the goal of such disclosure is primarily for the patient's benefit.

# Context of Therapy

- **Client factors** : Culture, history -- including history of trauma, sexual and/or physical abuse -- age, gender, presenting problem, mental state and type and severity of mental disturbances, socio-economic class, personality type and/or personality disorder, sexual orientation, social support, religious and/or spiritual beliefs and practices, physical health, prior experience with therapy and therapists, etc.
- **Setting factors**: Outpatient vs. Inpatient; Solo practice vs. group practice; Office in medical building vs. private setting vs. home office; Free-standing clinic vs. hospital based clinic; Privately owned clinic vs. publicly run agency;
  - The presence or proximity of a receptionist, staff or other professionals. Locality: Large, metropolitan area vs. small, rural town vs. Indian reservation; Affluent, suburban setting vs. poor neighborhood vs. university counseling center; Major urban setting vs. remote military base, prison or police department setting.



# Context of Therapy

- **Therapy factors:** Modality: Individual vs. couple vs. family vs. group therapy; Short term vs. long term therapy; Intensity: Therapy sessions a month consultation; Population: psychotherapy; Theoretical Orientation: humanistic vs. group therapy vs. therapy.

**Therapeutic relationship factors:** therapeutic alliance, Intense and relationships; Length, i.e., new vs. i.e., beginning of therapy vs. mid-termination; Idealized/transference, more egalitarian relationships; Family and community, in the community vs. only in the office, distanced relationship; Presence or absence of dual relationships and type of dual relationships, if applicable.

## **Therapist factors:**

Culture, age, gender, sexual orientation;  
Scope of practice (i.e., training and experience).

# Boundary Crossings

- Boundary crossings represent departures from usual therapeutic practice that do not harm the patient or the therapeutic work (the principle of non-maleficence)
- Examples:
  - Broken down car - client give a ride to service station – owned by client
  - Shopping at a venue owned by a client
  - Your client is your child's 4<sup>th</sup> grade soccer coach
  - having lunch with an anorexic patient
  - making a home visit to a bed ridden elderly patient,
  - going for a vigorous walk with a depressed patient,
  - accompanying a patient to a medically essential appointment
  - lending a book,
  - attending a wedding, confirmation, Bar Mitzvah or funeral,
  - going to see a client performing in a show.

# Boundary Violations

- Boundary violations, in contrast, depart from usual practice but have the effect of harming the patient, often (but not always) in the form of exploitation of the patient.
- **Boundary violations** occur when therapists cross the line of decency and violate or exploit their clients.
- Examples:
  - Accepting football tickets from a client
  - Loaning money to a client
  - Exploitive business relationships
  - Sexual misconduct
  - Theft of client funds
  - Extra-therapeutic contacts
  - Therapist stops billing the patient

# Values-Based Ethics



- Traditional ethics based on assumptions that:
  - Ethics apply to professional behavior only
  - Ethics are “rules” to be complied with for common good
- Values-based ethics assume:
  - Ethical behavior is a lifestyle
  - Ethics guides professional’s work and personal life
  - Common good emphasizes both client and social welfare

# Ethical Aspects of Self-Disclosure

- Self-disclosure has a number of dimensions,
- Clinical,
- Therapeutic,
- Technical



.....and  
In some  
cases—  
legal or  
regulatory

# Wrapping it up.....

- In considering ethical aspects of self-disclosure, we should identify the most relevant principles, which are:
  - Beneficence (doing good for the patient)
  - Non-maleficence (doing no harm)
  - The fiduciary relationship between clinician and patient, where the interests and welfare of the patient always predominate
- These 3 principles share the purpose of undertaking therapeutic interventions to benefit the patient, not the therapist.
- Respecting the dignity of the patient is the sovereign ethical principle that guides all the others.
- Compassion, neutrality, altruism, autonomy, and abstinence from personal gratification may also be invoked in resolving dilemmas regarding self-disclosure.

# Recommendations

- Therapists are well advised to think through their own views on the ethics of self-disclosure in advance
- When an unforeseen opportunity arises, or when a patient requests disclosure, the response—though also spontaneous—will be neither thoughtless nor impulsive.
- Be careful... the opportunity for the therapist to reflect, and to explore the matter with the patient should not be neglected in favor of a prompt answer, such as is often sought in the doorway of the office as the patient is leaving.
- A respectful response is useful, such as, “That sounds like something we might want to explore more thoroughly in our next session.”
- As always, **documentation** and **consultation** should not be neglected in this complex area.