



Ethics in Behavioral Health Practice

Part II

STAYING OUT OF TROUBLE

Lisa Hadley, MD, JD
June 11, 2010



Western Department of Mental Health
and Substance Abuse Services

APS Healthcare



June 17, 2010

1

Practice Considerations



- Billing
 - Bill only for the services you provide
 - Bill only for the client(s) you see
 - Obtain informed consent regarding billing practices
 - Know what your provider agreements say
 - Don't forget about confidentiality
 - Should you sue to collect unpaid fees?

Practice Considerations



- Starting a practice
 - Don't abandon your current clients
 - Should you recruit your current clients to move to your practice?
 - Consult your attorney, accountant, insurance agent, etc. for business advice
 - Develop forms to be used
 - Decide who you will treat

Practice Considerations



- Starting a practice
 - Advertising – do not be misleading
 - Will you be hiring other therapists?
 - Plan for vacations, after hours, if you die or need to close practice

Practice Considerations



- **Setting fees**
 - Fees must be “reasonable”
 - Kickback arrangements are unethical and illegal
 - Are arrangements to pay rent by splitting fees ethical?
 - Use caution with bartering agreements
 - Only at client’s suggestion
 - Not exploitative
 - Documented in informed consent
 - Accepted practice in the community

Practice Considerations



- Closing or interrupting a practice
 - Plan in advance
 - Terminate contracts – lease, managed care, etc.
 - Notify clients
 - Discuss referral options
 - Make sure records are up to date
 - Cooperate with new therapist
 - Know what your licensing board, malpractice carrier and state laws require

Practice Considerations



- Record keeping
 - Date, time, service provided
 - Assessment addressing bio-psycho-social aspects of client needs
 - DSM-IV-TR or ICD-9 diagnosis
 - Symptoms supporting the diagnosis
 - Treatment plan
 - Client response to treatment
 - Coordination of care
 - **MUST BE LEGIBLE**

Practice Considerations



- Record keeping – too much or too little information?
 - Must be enough information for another provider to assume the treatment if needed
 - Must be enough to support service billed for
 - Do not include information that is not pertinent to the client's treatment
 - Do not delete anything from record – even if you make corrections

Record keeping examples

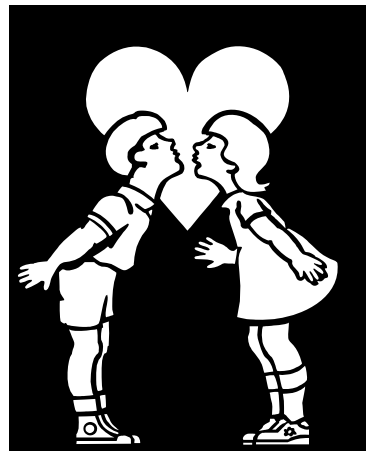


- *“Client seen. Treatment performed.”*
- Group therapy note – *“Client offered advice to group member, Alan Trouble, about his extramarital affair.”*
- *“Client stated ‘I saw that @#& *# @)...9th grade history teacher from Main Street High School yelling at his wife. He said . . . ’ ”*

Duty to Warn



- *Tarasoff v. The Regents of the University of California* (1976)



Prosenjit Poddar

Tatiana Tarasoff

1969 University of California at Berkley

Duty to Warn



- *Tarasoff*
 - Poddar thought they had a serious relationship
 - Tarasoff told him she was not interested
 - Poddar became depressed
 - Summer 1969 – Poddar started therapy with a psychologist, Dr. Moore at student health
 - Tarasoff was in Brazil for the summer
 - August 1969 – Poddar told Dr. Moore he planned to kill Tarasoff when she returned

Duty to Warn



- *Tarasoff*
 - Dr. Moore informed campus police
 - Campus police questioned Poddar and let him go after he promised to stay away from Tarasoff
 - The psychiatrist in charged informed staff not to pursue hospitalization of Poddar
 - Tarasoff returned from Brazil in October, 1969
 - October 27, 1969 – Poddar stabbed her to death

Duty to Warn



- *Tarasoff*
 - Tarasoff’s family sued because Ms. Tarasoff had not been warned by the mental health providers of the threat
 - California Supreme Court – 1976
 - When a “patient presents a serious danger of violence to another” the therapist or psychiatrist “incurs an obligation to use reasonable care to protect the intended victim against such danger”

Duty to Warn



- What has happened since *Tarasoff*?
 - Duty to warn laws vary from state to state
 - More than half the states now have statutes regarding duty to warn
 - Some state have case law regarding duty to warn
 - Some states have no law
 - Some states impose a duty to warn
 - Some states permit but do not require warning

Duty to Warn



- What about Oklahoma?
 - Statute 59 Okl. St. § 1376
 - Mandatory – requirement to warn statute
 - Professionals named – Licensed psychologists only
 - Threat – “explicit threat to kill or inflict serious bodily injury”
 - Victim – “a reasonably identified person”
 - Parties warned – the reasonably identified person and/or a law enforcement agency

Duty to Warn



- What about non-psychologist mental health providers in Oklahoma?
 - *Wofford v. Eastern State Hospital* (1990)
 - “[A] psychiatrist has a duty to exercise reasonable professional care in the discharge of a mental patient...”
 - When the patient presents an “unreasonable risk of harm to others”
 - Duty to “persons ..foreseeably endangered by the patient’s release”

Malpractice



- Negligence by a health care provider
- Elements that must be established by plaintiff
 - Duty
 - Breach of Duty
 - Injury
 - Proximate cause

Malpractice



- Issues that may result in malpractice suits
 - Sexual impropriety
 - Incorrect treatment or lack of expertise for treatment provided
 - Breach of confidentiality
 - Countersuit for fee collection
 - Suicide of client
 - Improper death of client or others
 - Defamation – libel/slander
 - Incorrect diagnosis
 - Loss of child custody or visitation
 - Violation of legal regulations

Testifying in Court



- **Privilege and Confidentiality**

- Privilege – belongs to the client
- Judge determines if the privilege applies
- If privilege does not apply, therapist may face contempt of court for not testifying
- Therapist may raise the privilege issue in court anyway
- Therapist may object to testifying for the record

Case examples



Cases and discussion

Key points to remember



- Know your professional Code of Ethics, relevant State and Federal laws.
- Saying no to a client is difficult – so is defending a claim for unethical conduct
- Before deciding on a questionable course of action – ask yourself “what if?” – “what is the worst case scenario?”
- Document carefully

References



- American Psychiatric Association: Ethics Primer of the American Psychiatric Association. Arlington, VA, American Psychiatric Association, 2001. [online version] Retrieved from <http://www.psych.org/Departments/EDU/residentmit/ethicsprimer.aspx>
- American Psychiatric Association: The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry, 2009 Edition Revised. Arlington, VA, American Psychiatric Association, 2009. [online version] Retrieved from <http://www.psych.org/MainMenu/PsychiatricPractice/Ethics/ResourcesStandards/PrinciplesofMedicalEthics.aspx>
- Bonner, M. (1991). Oklahoma Adopts the Tarasoff Doctrine. *OAFJ Advocate*, 24(6). 22.
- Gabbard, GO. (2005). Patient-Therapist Boundary Issues. *Psychiatric Times*, 22(12). Retrieved from <http://www.psychiatrytimes.com/display/article/10168/52646>.
- Hartsell, T., & Bernstein, B. (2008). *The portable ethicist for mental health professionals: a complete guide to responsible practice*. 2nd ed. Hoboken, NJ: John Wiley & Sons.
- Herbert, PB., & Young, KA. (2002). Tarasoff at Twenty Five. *Journal of the American Academy of Psychiatry and the Law*, 30, 257-281.
- Monahan, J. (2006). Tarasoff at Thirty: How Developments in Science and Policy Shape the Common Law. *University of Cincinnati Law Review*, 75, 497-521.
- Pope, KS & Keith-Spiegel, P. (2008). Dual Relationships, Multiple Relationships, & Boundary Decisions. *Journal Of Clinical Psychology*, 64(5),638-652. Retrieved from <http://kspope.com/ethics/boundary.php>
- Smith, D. (2003). 10 Ways Practitioners Can Avoid Frequent Ethical Pitfalls. *Monitor on Psychology*, 34(1). Retrieved from <http://www.apa.org/monitor/jan03/10ways.aspx>
- Tarasoff v. The Regents of the University of California*, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (Cal. 1976).
- U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General—Executive Summary*. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, National Institutes of Health, National Institute of Mental Health, 1999. [online version] Retrieved from <http://www.surgeongeneral.gov/library/mentalhealth/toc.html>
- Wofford v. Eastern State Hospital* 795 P.2d 516, 1990 OK 77 (Okla.,Jul 24, 1990) (NO. 69,759)**
- Zur, O. (2006). Therapeutic Boundaries and Dual Relationships in Rural Practice: Ethical, Clinical and Standard of Care Considerations. *Journal of Rural Community Psychiatry*, E9(1). Retrieved from http://www.marshall.edu/jrcp/9_1_Zur.htm.