


March 23, 2017
Erik Fox, J.D., Ph.D.
erik@erikfox.com
619-512-3745

LAW AND ETHICS



The illustration shows a person with a question mark above their head, standing between two signs labeled 'Ethical' and 'Legal'. There are also question marks above the signs, suggesting a choice or conflict between the two concepts.

Introductions and Commitment

➤ Expectations:

- Dynamic – step up/step aside
- Interruptions – electronics
- Questions – ask them, practice curiosity, engage
- Results

Contents

➤ Law vs. Ethics


➤ Specific Legal/Ethical Issues

- Informed consent
- Duty to warn
- Professional will
- Technology
- Self-care

➤ Practice Scenarios

Law

- **Creation of Laws**
 - Legislature
 - Legislator
 - Statutes
 - Regulations
 - Case Law

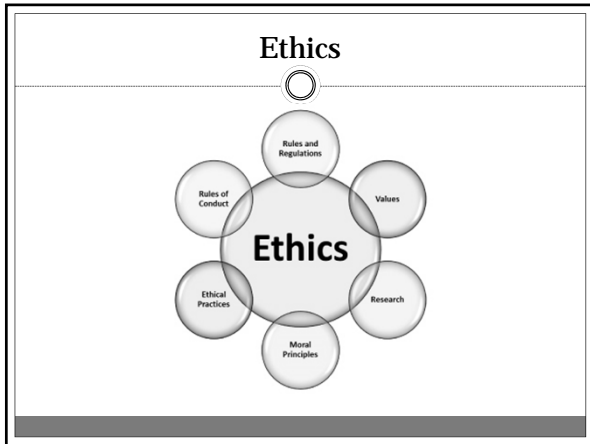


Law

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

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



Ethics

➤ **Ethics**

- Or of relating to moral action, conduct, motive or character; as, ethical emotion; also treating of moral feelings, duties or conduct; containing precepts of morality; moral. Professionally right or befitting; conforming to professional standards of conduct (Blacks Law Dictionary 6th edition)

Ethics

➤ **Sometimes the harder choice in the short term**

- So how to we work proactively vs. reactively
- Commitment to ethical standards (consult, consult, consult)
 - ATSA or other organizations

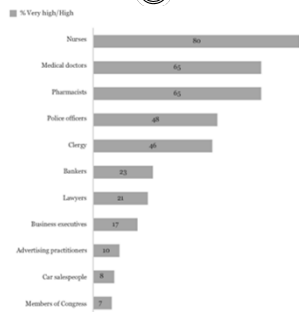
Ethics

- Ethical answers are dependent on the group, the time, and the consensus - psychiatrists, vs. social workers, vs. other disciplines (managers)
- Social guidelines
- Based on moral principals
- Based on values
- Consequences are social

Who is the most ethical?


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

Who is the most ethical?



Legal vs. Ethical Differences

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



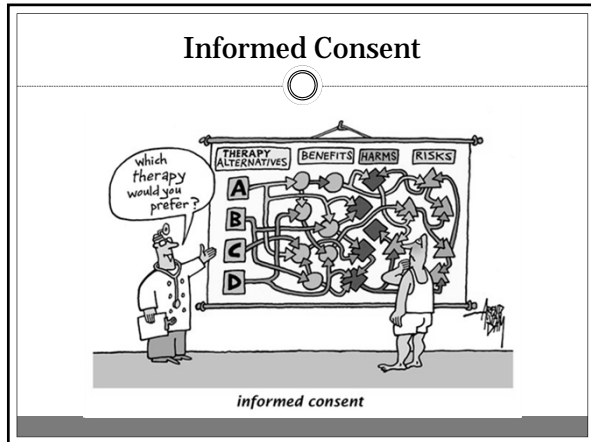
The image shows a street signpost with two signs. The sign on the left is labeled 'ETHICS ST' and the sign on the right is labeled 'LAW WAY'. The signpost is a dark pole with a spherical top. The background is a cloudy sky.

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)

Legal vs. Ethical Differences

➤ Have you read your code of conduct for your group
➤ Why is working with sexual offenders harder?
 ➤ Challenges of this work
 ➤ Boundaries pushed in a stronger way
 ➤ Trauma of the work
 ➤ How to protect oneself from the trauma



Informed Consent

- What's changed?
- Relationship between a healthcare professional and their patient or research subject was more unequal in the past
- Tuskegee study
- Nuremburg Code "The voluntary consent of the human subject is absolutely essential"

Informed Consent

- **Informed Consent is a legal procedure**
 - Ensures that a patient, client, research participant is aware of the
 - Nature of the treatment
 - Alternative treatments
 - Aware of the potential risks and benefits
 - Aware of the costs
- **How to truly obtain informed consent**
 - Does the person read it
 - Does the person understand it
- **Must be competent and must be voluntary**

Informed Consent

- Is it too detailed and frightens a client who is hesitant
- Does it scare patients away when non treatment risks are greater
- Can it be empowering to the patient in their role
- Does it shift responsibility to patients to work hard, increase self-confidence, autonomy and decrease dependence on the therapist

Informed Consent

- **Introduction**
 - Invites questions
 - Prepares one for therapy
 - Allows a choice
- **Credentials**
 - Invite questions – provide a foundation
 - Specialties
- **Availability**

Informed Consent

- **Confidentiality**
 - **Exceptions**
 - Harm to self or others
 - Child or elder abuse
 - Court order
 - Outside person/agency paying for services
 - Lawsuits
 - Consultation
 - Law enforcement (probation and parole)
 - Polygraph examiner
 - Confidentiality of other group members

Informed Consent

- **Scientific Theories**
 - Theoretical approach
 - Some basics
- **What is the therapist's role**
 - Facilitating self awareness
 - Listening to your story
 - Education
 - Learning tools
 - Healing through relationship
 - Discussion of goals and decisions

Informed Consent

- **Alternatives**
 - Another provider
 - Someone who is not a provider
 - Self-help
- **Memories and Psychotherapy**
 - My approach to remembering
 - How memories are triggered
 - Emotions and memories

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

Informed Consent

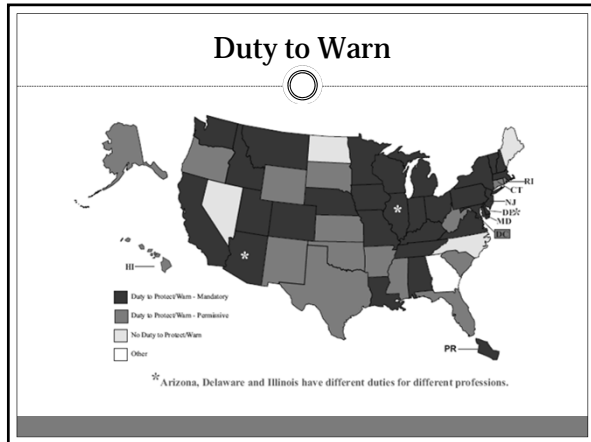
- **Financial Policy**
 - Missed appointments
 - Notice
 - Insurance
 - Phone calls
 - Accumulation of fees
- **Termination**
 - Your right to terminate
 - Therapist termination
 - Completion of treatment

Informed Consent

- **What to do if you are dissatisfied**
 - Talk to me
 - Ask for referrals
 - Department of Consumer Affairs
- **Questions you might ask me or any therapist**
- **What is your expected role**
 - Be truthful
 - Listen
 - Provide feedback

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**



Tarasoff

- What would you do without the law
- The effect of state duty to warn laws inspired by Tarasoff v Regents has been debated for decades
- Does it suppress risk statements
- Does it increase violence
- One study indicates an increase in homicides of 8.9% or 0.76 people per 100,000 (Edwards, Emory University, 2010)
- Jurisdiction

Professional Will

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

Last Will and Testament

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]

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>

Technology



Technology

➤ **Ethical Standard 6.02 - Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work**

(a) Psychologists maintain confidentiality in creating, storing, accessing, transferring and disposing of records under their control, whether these are written, automated or in any other medium.

Technology


➤ **Backing up files**

- What are the obligations in your jurisdictions
 - Legal vs. ethical obligations?
- Lock and key
 - How secure should it be
 - Natural disasters
 - Theft

Technology




➤ **Cloud Storage (do you use Microsoft Onedrive, Dropbox, Google drive, Office 365, Carbonite, Crashplan Pro, etc)**

➤ **What must you have?**




Technology

- Wifi
 - VPNs (cloak)
 - https://
- Laptops, phones, iPads
 - Encryption
 - iPhone, iPad (list of requirements for HIPAA) 8 digit passcode, remote wipe, separate password for Goodreader, etc.
- What data is on your phone?
 - Contacts?





Technology

- Home or Office wifi
 - Change your default credentials
 - This is different than your wifi password
 - As important as any email password
 - Update firmware
 - WPA2 instead of WEP security
 - Disable remote administrative access
 - Turn off SSID or change name to hide model







Technology

- Our obligations
 - Knowledgeable and competent
 - Communicate risks
- Ironkey
 - 
 - 

Technology

- > Apricorn
 - > Keyloggers
- > Virtru
- > Been Verified?



Self-care

- > **2.06 Personal Problems and Conflicts**
 - (a) Psychologists refrain from initiating an activity when they know or should know that there is a substantial likelihood that their personal problems will prevent them from performing their work-related activities in a competent manner.

Self-care

- > (b) When psychologists become aware of personal problems that may interfere with their performing work-related duties adequately, they take appropriate measures, such as obtaining professional consultation or assistance and determine whether they should limit, suspend or terminate their work-related duties. (See also Standard 10.10, Terminating Therapy.)

Self-care

- Why everyone needs it
- Why sex offender treatment providers need it
- Multidimensional
 - Behavioral
 - Exercise
 - Nutrition
 - Sleep
 - Social support
 - Relational – establish and maintain boundaries
 - Internal – being mindful and compassionate with ourselves

Self-care

- Why we don't do it
 - Too busy
 - Always multi-tasking
 - Work is mentally draining
 - Difficulty setting limits
 - It feels selfish
 - We put it off
 - We are taught to care for others but not ourselves
 - Not able to see burnout coming

Burnout

- Not setting boundaries
 - Work on your day off
 - Always checking e-mail
 - Overly flexible with scheduling
- Isolation
 - Not consulting
 - Not socializing
- Not taking vacations
- Unhealthy coping mechanisms – quick fixes
- Unrealistic expectations

Ethical Scenarios

- What do you do now?
- What could you have done earlier in the chain of events?
- What could you have done before the series of events?

Ethical Scenarios

- You see on Facebook that a former client (from 5 years ago) has sent you a friend request. You really liked this client and he was a really motivated individual who turned his life around. What do you do?

Ethical Scenarios

- A client tells you he wants to kill his ex-girlfriend. You work in San Diego and his ex-girlfriend lives in Mexico (and does not speak English). The client is on federal probation. You are not sure if he really means it and when you ask him how he would kill her he says he would shoot her (but of course he is on probation and can't have a firearm). What do you do?

Ethical Scenarios

➤ You are working on an evaluation for an attorney you work closely with. She asks you to make a couple of corrections to the evaluation and email it to her as soon as you can because she has to submit the report in court that morning. You are travelling and run down to the business center at your hotel and make the correction and email the file. On your way to the airport you realize you left the USB drive in the hotel computer. What do you do?

Ethical Scenarios

➤ Take an assessment of your burnout
➤ What questions can you ask yourself as a way to measure your baseline?
➤ What is your optimal workload?
➤ What work scenarios are your biggest challenges and how do you quantify them?
➤ What are the boundaries that you will protect?
➤ How will you restore your self-care if they are breached?
➤ How does pushing these boundaries impact your professionalism?

Ethical Scenarios

➤ You agree to act as the executor of a friend/colleague's professional will. You completely forget about the agreement. Years later your colleague's wife contacts you and informs you that the colleague (who you have not worked with in a decade now) has died in a car accident. You have retired and have a trip planned to Europe in two weeks and will be gone for nearly a month. Additionally, you now live in another State since taxes in California are outrageous. What do you do?

Ethical Scenarios

- Take an assessment of your technology risk factors
- How long ago did you use a public wifi with a device that has PHI on it?
- Is your hard-drive encrypted?
- Is your email password 18 characters?
- Does your email password contain upper case letters, lower case letter, numbers, and symbols
- Do you have wifi at your office and home? If so, does your router password conform to the above?
- Do you have an encrypted USB drive?
- Do you have a VPN?
- Do you use cloud storage? If so, do you have a signed BAA?

Ethical Scenarios

➤ A probation mandated client arrives at your office late in an agitated state for an intake interview. During the intake the client is very slow to respond to questions and is very hesitant to sign your informed consent. You have another appointment and are somewhat frustrated with the client's delay. The client says he will not sign your informed consent and has to "think about it" to determine if he wants to participate in treatment with you. He informs you that he does not consent to your contacting his probation officer and informing her that he was late or even at your office at all. The client then leaves. 5 minutes later the probation officer calls and asks if the client shows up as he has violated his probation conditions and officers want to question him immediately. What do you do?

Ethical Scenarios

➤ You evaluate a violent sex offender and the conclusions of your evaluation are unfavorable to the individual. During the evaluation the individual was passive aggressive and at times threatening in subtle ways. You are subpoenaed to testify at a hearing regarding your evaluation. The jurisdiction is in a small rural community and you are fearful for your safety although there have been no direct personal violent threats made against you. What do you do?

Ethical Scenarios

You are counseling a client who you find attractive and you think the client also finds you attractive. You consider the client's attraction to you as a sign of a positive therapeutic relationship. After three sessions the client stops therapy due to financial reasons and indicates to you in the last session a desire to spend time with you socially. You focus on termination and do not address the attraction directly. One year later, you run into your former client at an event. The two of you begin conversing and it is clear that you both are not in a relationship. The former client then asks you to coffee. What do you do?

Ethical Scenarios

➤ What will you commit to in order to increase your self-care in the next week?

References

- American Psychological Association - Ethical Principles of Psychologists and Code of Conduct <http://www.apa.org/ethics/code/>
- Cloak VPN <https://www.getcloak.com>
- Ken Pope Articles, research and Resources in Psychology <http://www.kspope.com/>
- Bitlocker <http://windows.microsoft.com/en-us/windows-vista/bitlocker-drive-encryption-overview>

References

- Two-factor authentication https://en.wikipedia.org/wiki/Two-factor_authentication
- Lastpass – <https://lastpass.com>
- Mental Health Professionals Duty to Warn by state <http://www.ncsl.org/research/health/mental-health-professionals-duty-to-warn.aspx>
- Ironkey - <http://ironkey.com/en-US/>
- Center for Sex Offender Management CSOM www.csom.org

References

- California Sex Offender Management Board (CASOMB) www.casomb.org
- Apricorn Encrypted drives - <http://www.apricorn.com//products/hardware-encrypted-drives/aegis-secure-key-3-0.html>
- Home or Office wifi- http://www.slate.com/articles/technology/future_tense/2015/07/wireless_router_security_how_to_secure_this_vulnerable_point_of_your_wi.html

References

- Self-care <https://youtu.be/4iGdFAo-VYg>
- Virtru secure HIPAA compliant email – www.virtru.com
