

CPY 545  
Legal, Professional, and Ethical Issues in Counseling

Client Rights & Counselor Responsibilities

Class #4

CPY 545 Ethical, Legal & Professional Issues in Counseling  
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Protecting Client Rights

It's all about the relationship!

For counseling practitioners, nothing is more important than the counseling relationship. Regardless of your preferred theory of counseling, the common denominator that cuts across all perspectives is the primacy of the counseling relationship. The same can be said when we think about the ethical and legal implications of clinical practice: The counseling relationship remains the central concept.

The best way to protect the rights of a client is to respect and nourish the counselor-client relationship.

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PROFESSIONAL LIABILITY

**LIABILITY**  
Legal responsibility for one's conduct.

**PROFESSIONAL LIABILITY**  
Professional/clinical actions taken or not taken by the practitioner that result in an "injury" to the client (plaintiff).

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MALPRACTICE LAWSUITS (ACA-IT) 1997-2001

	Percent by Number Of Cases	Percent by Dollars Spent
Breach of Confidentiality	21%	10%
Dual Role Conflicts	10%	5%
Suicide	6%	55%
Failure to Treat / Improper Treat	15%	5%
Touching / Physical Contact	4%	1%
Abandonment	6%	2%
Libel / Slander	15%	1%
Family Issues	5%	2%
Failure to Report	8%	11%

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**Licensure**  
**Disciplinary Action**

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INFORMED CONSENT FOR TREATMENT

- Intended to reduce misunderstanding by defining important elements of the counseling relationship
- Helps the client understand the "rules" of counseling
- Form or Brochure – written in your voice (or agency voice)  
What does it say?  
How does it say it?  
What is the tone?
- Provided to client in advance if possible
- Goal – not just consent, but *informed consent*

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INFORMED CONSENT FOR TREATMENT

- 1. Client Participation: Voluntary or Involuntary
- 2. Client & Counselor Involvement
- 3. Emergencies
- 4. No Guarantees
- 5. Risks Associated with Counseling
- 6. Confidentiality, Privilege & Privacy
- 7. Exceptions to Confidentiality & Privilege

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- 8. Counseling Approach or Theory
- 9. Counseling & Financial Records
- 10. Ethical Guidelines
- 11. Licensing Regulations
- 12. Practitioner Credentials
- 13. Fees & Charges
- 14. Insurance / Managed Care
- 15. Responsibility for Payment

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- 16. Disputes & Complaints
- 17. Cancellation Policy
- 18. Affiliation Relationship
- 19. Supervisory Relationship
- 20. Colleague Consultation

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**CONFIDENTIALITY & PRIVILEGE**

**CONFIDENTIALITY**  
The ethical and legal duty of the mental health professional not to disclose or allow disclosure of information learned from the client.

**PRIVILEGE**  
Privilege is a legal term or act  
Privilege is the protection of confidential communication in a judicial or administrative proceeding.  
Privilege belongs to the client.  
Privilege is established by state statute.

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**CONFIDENTIALITY CONSIDERATIONS**

1. Set Confidentiality Parameters at Outset of Counseling
2. Define Confidentiality Ground Rules, Limits and Exceptions
  - Abuse Reporting
  - Harm to Self or Others
  - Court Order
  - Release by Client
3. Obtain Release of Information and/or Records
  - Confidentiality - Rule of Thumb
  - No confidential information leaves the office without a signed Release of Information or a Court Order

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4. Faxing Confidential Material
5. Confidentiality within Families/Couples
6. Office Staff: Provide Real Training
7. Release of Information to Managed Care or Insurance Company
8. Deceased Clients: Confidentiality and privilege are alive – even when the client is deceased

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9. Appoint a "Records Custodian"

10. Counseling -  
Court Ordered or Condition of  
Employment /School Attendance

11. Evaluation -  
Court Ordered or Condition of  
Employment /School Attendance

12. HIPAA Compliance

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Health Information Portability and Accountability Act (HIPAA)  
Federal Privacy Regulations

- **Intent:** The privacy regulations are designed to safeguard the privacy and confidentiality of a consumer's health information.
- **Covered Entities:** Providers of health services, processors of consumer health care information, and business associates who electronically transmit any consumer information.
- **What is Protected:** all medical records or other individually identifiable health information held or disclosed by a covered entity in any form (electronically, on paper, or orally) will be covered by the final regulation.
- **Psychotherapy Notes:** notes recorded (in any medium) by a healthcare provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individual's medical record.

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Client HIPAA Rights

- Protected health information may not be disclosed by a covered entity without the informed and voluntary written consent or the authorization of the client.
- Right to access medical records including a history of the disclosures of the protected information
- Right to request a restriction on the use and disclosure of protected information
- Covered entities must provide clients with clear, written explanation of how their protected health information can be used and disclosed
- Covered entities must
  - Appoint a Privacy Officer
  - Develop privacy policies and procedures
  - Maintain a record of all versions of their privacy policy
  - Provide training to the workforce
  - Develop a system of sanctions for employees who violate policies
  - Meet documentation requirements

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## SUBPOENAS

### How to Respond

1. Do not immediately provide the information.
2. Contact your client and or client's attorney.
3. Discuss implications of releasing the information.
4. If "YES" - Obtain a written informed consent to release information. Ensure that all clients who have been involved sign the release.
5. If "NO" - Request that the client's attorney initiate a motion to quash the subpoena or a motion for a protective order.
6. Notify the initiator of the subpoena that you cannot honor the subpoena because you do not have a release.
7. Without a client's consent, you may surrender records or provide deposition or court testimony only when you have received a court order from the judge.
8. Retain copy of all documents and note all discussions in client's chart.

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## COURT or DEPOSITION TESTIMONY

- Court Testimony vs. Deposition Testimony
- Witness vs. Defendant
- Fact Witness
- Expert Witness

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## TIPS FOR TESTIFYING

1. Listen carefully; answer without volunteering additional information.
2. Avoid jargon.
3. Be wary of trick questions such as,  
"You testified earlier, did you not, that...?"
4. Don't lose your temper.
5. Don't be afraid to say, "I don't know."
6. Don't accept payment on a contingency basis.
7. If questioned about "coaching," indicate you did review case with the attorney and were told by the attorney to answer honestly.
8. Realize that you may be asked for test data.
9. Keep in mind that client may be present during deposition or in court.
10. Investigate parties before agreeing to be an expert witness (avoid conflicts of interest).
11. Don't be tempted to take on role of expert if questions about your qualifications exist.

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## Case Discussion

**Karen Jones**, Licensed Marriage & Family Therapist, has a thriving private practice in a large metropolitan community. She has been treating Ken & Joanna Brown for marital problems. The husband is a surgeon, the wife a homemaker. The couple has been in therapy for almost a year. Among many issues, a central theme in this marriage is the impact of Ken's controlling behavior. He seems unwilling or unable to recognize and take responsibility for his behavior. The counselor has been working very hard to help Joanna (wife) become strong enough to deliver a clear message about the impact of Ken's controlling behavior on her and the quality of the marriage. The counselor has been working equally hard to help Ken (husband) become open enough to really hear and respect the reality of Joanna's message.

For the past six months, the counselor has also treating another client, Joan for depression. One of the many issues with Joan involves trauma she experienced following complications from a surgical procedure nearly two years ago. Several months after beginning therapy, Joan reached a decision – she would consult an attorney and bring suit against the doctor who performed the surgery. Today, an attorney representing Joan contacted the counselor. The attorney advised the counselor that he would be calling her for a deposition regarding her evaluation of the emotional consequences of the medical complications. The attorney mentioned the name of the surgeon...Dr. Ken Brown.

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