Virginia Society for Clinical Social Work
Blue Ridge Chapter
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SOCIAL WORK ETHICS:
How Do you Know if you are doing the right thing?

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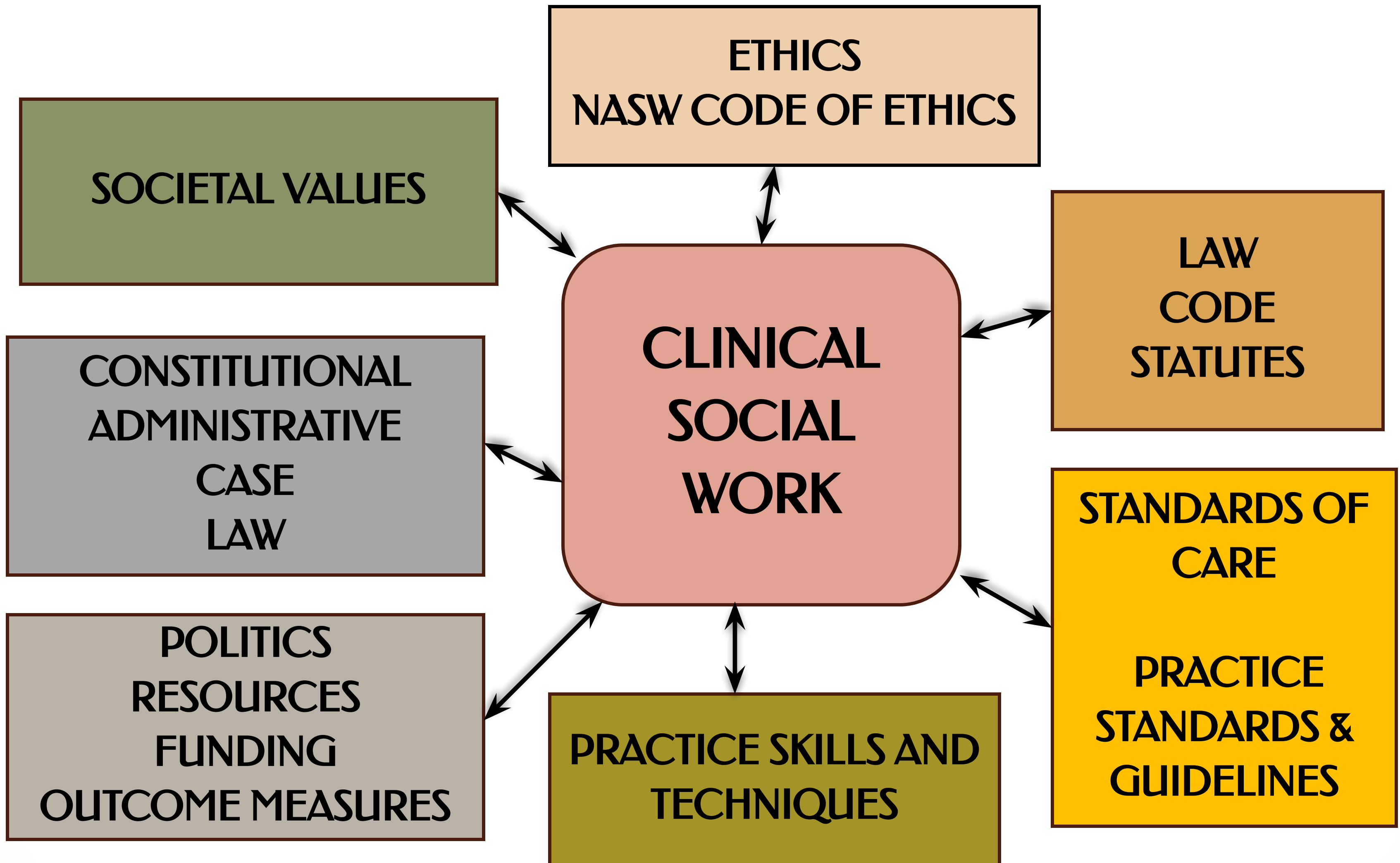
Ethical Issues in Providing Clinical Social Work: Context and Factors of Influence



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ETHICS-DEFINITION

Ethics:

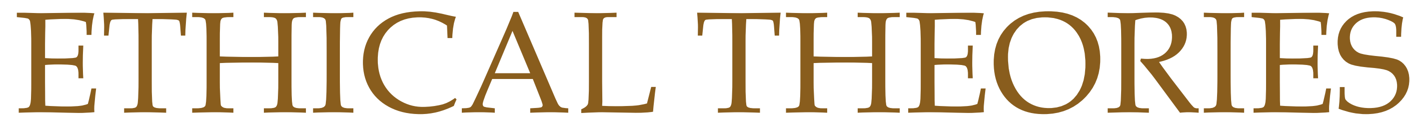
1. **The discipline dealing with what is good and bad and with moral duty and obligation.**
2. **A set of moral principles or values.**
3. **A theory or system of moral values.**
4. **The principals of conduct governing an individual or a group (professional)**
5. **Guiding philosophy**

By permission: From Merriam-Webster's Collegiate Dictionary, 2001.

ETHICS-PROFESSIONAL

Ronald K. Bullis defines professional ethics as “a system of norms.” Professional ethics are ethical determinations and guidelines specifically determined by or specifically determined for a professional group. Professional norms can be operationalized by a code of ethics.

Leila O. Schroeder notes that one hallmark of a profession is a codified system of ethics. Unless the provisions of this or similar code are incorporated into state law, even if only by reference, their observance is voluntary, not mandatory



<u>Metaethics</u>- concerns the meaning of ethical terms or language and the derivation of ethical principles and guidelines- "Good" vs. "Bad."

<u>Normative Ethics</u>- attempts to apply ethical theories and principles to actual ethical dilemmas. Conflicting duties.

A. <u>Deontological</u>- certain actions are inherently right or wrong

B. <u>Teleological</u>- the rightness of any action is determined by the goodness of its consequences.

Teleological

1. <u>Egoism-</u> when faced with conflicting duties you should maximize your own good and enhance your own self interest.
2. <u>Utilitarianism</u>- when faced with conflicting duties your action is right if it promotes the maximum good.
   - Good- aggregative- that which promotes the greatest total or aggregate good.
   - Locus-aggregative- that which promotes the greatest good for the greatest number.

- ACT: considers only individual case
- RULE: considers case as precedent setting.

"The Theory of Morality" Alan Donagan (1977)

- When choosing among duties that may result in harm, one should do that which results in the least harm.
- "Minimization of Suffering"- (Popper 1966)
- "Negative Utilitarianism" (Smart & Williams 1973)
- Rank ordering of values and ethical duties. Judgment about what values or duties will take precedence over others

ETHICAL PRINCIPLES SCREEN

1. Principle of the protection of life
2. Principle of equality and inequality
3. Principle of autonomy and freedom
4. Principle of least harm
5. Principle of quality of life
6. Principle of privacy and confidentiality
7. Principle of truthfulness and full disclosure

CLIENTS ?

PINCUS AND MINAHAN OFFER A VIEW OF A "CLIENT SYSTEM"

". . . WE TAKE THE VIEW... THAT THE CLIENT SYSTEM AS THE INDIVIDUAL, FAMILY, GROUP, ORGANIZATION, OR COMMUNITY THAT, IN ADDITION TO BEING THE EXPECTED BENEFICIARY OF SERVICE, IS A SYSTEM THAT ASK FOR HELP AND ENGAGES THE SERVICES OF A SOCIAL WORKER AS A CHANGE AGENT. AND WE ADD A THIRD DIMENSION TO OUR VIEW OF A CLIENT SYSTEM- THE IDEA THAT PEOPLE BECOME CLIENTS ONLY WHEN A WORKING AGREEMENT OR CONTRACT HAS BEEN ESTABLISHED BETWEEN THEM AND A CHANGE AGENT. . . WE CALL THE PEOPLE THE CHANGE AGENT NEEDS TO CHANGE OR INFLUENCE IN ORDER TO ACCOMPLISH HIS GOALS THE "TARGET SYSTEM."

SOCIAL WORK PRACTICE BY PINCUS AND MINAHAN, CHAPTER 3, "FOUR BASIC SYSTEMS IN SOCIAL WORK PRACTICE"

WHAT IS A FORMER CLIENT?

PRACTITIONERS HAVE DIFFERENT VIEWS ON THE DEFINITION OF AN EX-CLIENT OR FORMER CLIENT. WHEN WOULD YOU CONSIDER SOMEONE TO WHOM YOU HAVE PROVIDED SERVICES TO BE AN EX-CLIENT?

THE THREE CATEGORIES AND RESULTS ARE:

FORMER CLIENT IS DEFINED:	**% AGREE**
1. AT THE TIME SERVICES ARE TERMINATED	**40.9 %**
2. ONCE A CLIENT, ALWAYS A CLIENT	**46.8 %**
3. OTHER *	**12.1 %**

(*INDICATED VARIOUS TIME PERIODS RANGES FROM SIX MONTHS TO TEN YEARS)

Social Work, January 2002, Mattison, Jayaratne and Croxton

FIDUCIARY DUTY

A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. The term is derived from the Roman law, and means a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires.

Black's Law Dictionary, St. Paul Minn., West Publishing Co. 1990

MALPRACTICE

1. A ***professional relationship existed*** between the social worker and client. Only thus does a social worker incur a legal duty of care.
2. There is a ***demonstrable standard of care*** and the social worker breached that standard.
3. The client suffered ***harm or injury***, which must be demonstrated and established.
4. The social workers breach of duty to practice within the standard of care was the ***proximate cause*** of the client's injury: that is, the injury was a reasonable foreseeable consequence of the breach.

Adapted from: Professional Liability and Risk Management, by Bruce E. Bennett, Brenda Bryant, Gary R. VandenBos, and Addison Greenwood, Copyright 1990 by the American

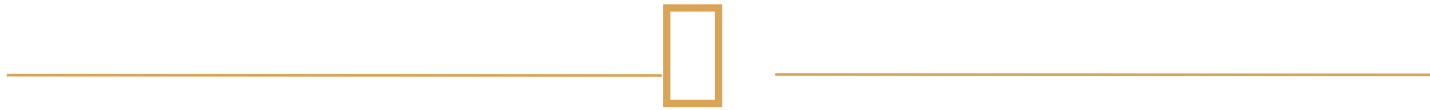
Standard of Care

"What an <u>ordinary, reasonable, and prudent</u> professional, with the same or similar training, would have done under the same or similar circumstances."

SOURCES OF STANDARDS OF CARE
OR
STANDARDS OF PRACTICE

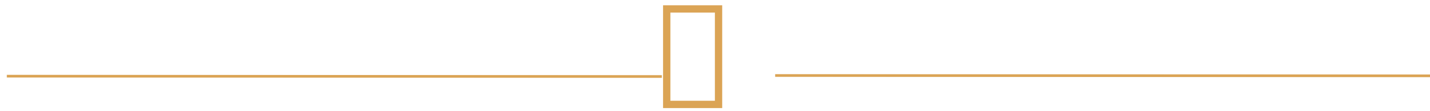
1. State licensing laws and regulations that define Standards of Practice
2. National professional associations that publish Codes of Ethics and Standards
3. Professional literature dealing with the area of practice.
4. Expert witnesses who can testify as to the current Standard of Care as it applies to the facts of the cast before the court

STANDARD OF PROOF



- Preponderance of evidence
- Clear and convincing
- Beyond a reasonable doubt

Preponderance of evidence = 51%



As a standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

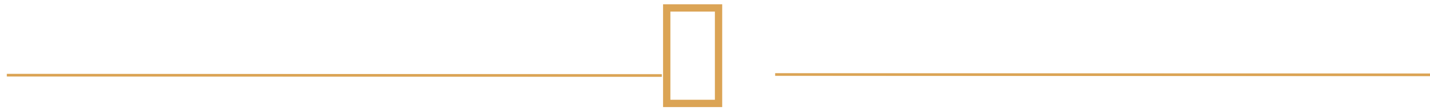
Black's Law Dictionary, St. Paul Minn., West Publishing Co. 1990

Clear and convincing = 75%

That proof which results in reasonable certainty of the truth of the ultimate fact in controversy. Proof which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be show where the truth of the facts asserted is highly probable.

Black's Law Dictionary, St. Paul Minn., West Publishing Co. 1990

Beyond a reasonable doubt = 99%



In evidence means fully satisfied, entirely convinced, satisfied to a moral certainty; and phrase is the equivalent of the words clear, precise and indubitable.

Black's Law Dictionary, St. Paul Minn., West Publishing Co. 1990

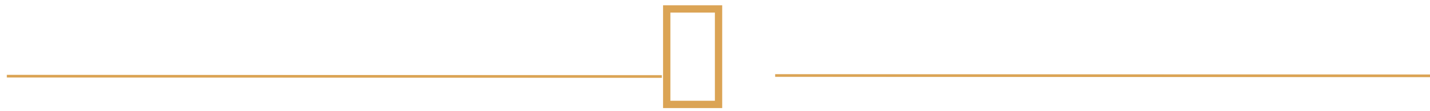
Frequency and Relative Cost of Malpractice Claims Filed Against Individual Social Worker: 1969 to 1990 (Reamer , F. 1995) Top Items

Malpractice Category

Index	n 634	% of n	%$ Paid	Cost
1. Incorrect Treatment	118	18.61	19.22	103
2. Sexual Impropriety	**117**	**18.45**	**41.34**	**224**
3. Suicide of Patient	32	5.05	10.77	213
4. Failure to warn a third party	8	1.26	2.58	205
TOTAL	275	**43.37**	**73.91**	

Frequent Ethical Areas of Difficulty

1) Boundaries:
   A. Typology of Boundary Crossings,
      i. Emotional and Dependency Needs
      ii. Personal Benefit
      iii. Altruism,
      iv. Unavoidable / Unintended Circumstances
      v. Slippery Slope Behaviors
   B. Boundary Violations,
   C. Typologies of Therapist Sexual Boundary Violators
      i. Rule Out Risk approach
      ii. Psychodynamic approach
      iii. Sexual Addiction approach
2) Termination of Services
3) Supervision of Other Clinicians



1. Boundaries

1. BOUNDARIES

Boundaries are the limits that allow for a safe connection based on the client's needs. When these limits are altered, what is allowed in the relationship becomes ambiguous. Such ambiguity is often experienced as an intrusion into the sphere of safety. The pain from a violation is frequently delayed, and the violation itself may not be recognized or felt until harmful consequences emerge.

At Personal Risk, Boundary Violations in Professional-Client Relationships, by Marilyn R. Peterson, W.W. Norton and Company, New York (1992).

A. Typology of Boundary Crossings

- EMOTIONAL AND DEPENDENCY NEEDS
- PERSONAL BENEFIT
- ALTURISM
- UNAVOIDABLE & UNANTICIPATED CIRCUMSTANCES

- Frederic G. Reamer Ph.D., Tangled Relationships: Managing Boundary Issues in the Human Services, New York, Columbia University Press, 2001

Altruism

- **Giving gifts to clients**- books, flowers, or cards.
- **Meeting clients in social or community settings**- weddings, graduations, AA, church and other events.
- **Offering client favors**.-rides, unscheduled informal follow up session, housing, informal counseling friend or neighbor and at work, supervising a former client.
- **Accommodating clients**- home phone number, calls while worker is on vacation, free services, "exceptions" to usual practice.
- **Self Disclosure**- to establish empathy, trust, or acceptance but may cause confusion and boundary crossing.

Frederic G. Reamer Ph.D., Tangled Relationships: Managing Boundary Issues in the Human Services, New York, Columbia University Press, 2001

UNAVOIDABLE & UNANTICIPATED CIRCUMSTANCES

- ☞ Geographic Proximity- rural settings
- ☞ Conflict of Interest- former client now your child's teacher.
- ☞ Professional Encounters- client is appointed to the board of directors of which you are a member.

Frederic G. Reamer Ph.D., Tangled Relationships: Managing Boundary Issues in the Human Services, New York, Columbia University Press, 2001

B. BOUNDARY VIOLATIONS

Boundary violation are acts that breach the core intent of the professional-client association. They happen when the professional exploits the relationship to meet personal needs rather then client needs. Changing the fundamental principle undoes the covenant, altering the ethos of care that obligates professionals ***to place client' concerns first***. In fact, all of the boundaries in a professional-client relationship exist in order to protect this core understanding.

At Personal Risk, Boundary Violations in Professional-Client Relationships, by Marilyn R. Peterson, W.W. Norton and Company, New York (1992) (page 74-75)

Typologies of Therapist Sexual Boundary Violators

i. Rule Out Risk Approach

1. **Uninformed/Naive**
2. **Healthy or Mildly Neurotic**
3. **Severely Neurotic and or Socially Isolated**
4. **Impulsive Character Disorders**.
5. **Sociopathic or Narcissistic Character Disorder**
6. **Psychotic or Borderline Personalities**

Gonsiorek, J. C. & Schoener, G. R. (1989). Assessment and development of rehabilitation plans for the therapist. In Gonsiorek, E. T., Hofstee, J. Luepker, T & Schoener, G. R., *In psychotherapists' sexual involvement with clients: intervention and prevention* (pp. 401 -410). Minneapolis, MN: Walk-in Counseling Center.

ii. Psychodynamic Approach

- Psychotic Disorders
- Predatory Psychopathy and Paraphilias
- Masochistic Surrender
- Lovesick

iii. Sexual Addiction

Archetypal Categorization

1. The Naive Prince 7.9%
2. The Wounded Warrior 22.7%
3. The Self-serving Martyr 25.0%
4. The False Lover 19.3%
5. The Dark King 13.6%
6. The Madman 11.4%

(The Wounded Healer, Irons & Schneider (1999) p. 102

- Therapy sessions becomes less clinical and more social.
- Patient is treated as "special" or confidant.
- Therapist self-disclosures occur, usually about current personal problems and sexual fantasies about the patient.
- Therapist begins touching patient, progressing to hugs & embraces.
- Extra-therapeutic contacts occur.
- Therapist and patient have drinks/dinner after sessions; dating begins.
- Therapist-patient sex begins

Simon 1995

Some discipline cases are not typical professional misconduct but administrative as listed below:

REVIEW OF VIRGINIA BOARD OF SOCIAL WORK DISCIPLINE CASES FROM 1992 TO 2011 THAT RESULTED IN A BOARD ORDER

Some discipline cases are not typical professional misconduct but administrative as listed below:

NUMBER OF CASES DEALING WITH LICENSURE RENEWAL PROBLEMS (Usually these had to do with licensees not completing the correct number of continuing education hours to renew license)	30
NUMBER OF CASES WITH INCOMPLETE DATA TO DETERMINE DISCIPLINE ISSUE	3

When just looking at differentiating the sexual misconduct cases from no sexual misconduct cases these are the numbers:

NUMBER OF CASES DEALING WITH MISMANAGEMENT OF COUNTERTRANSFERENCE INVOLVING SEXUAL MISCONDUCT	18
NUMBER OF CASES WITH NO SEXUAL MISCONDUCT: (includes 33 above)	70
TOTAL NUMBER OF DISCIPLINE CASES OF THE VIRGINIA BOARD OF SOCIAL WORK FROM 1992 TO 2011	88

ANALYSIS:

The license renewal cases are primarily an administrative matter and minor infraction. If you remove those 30 cases from the total and the 3 cases that had incomplete data then that leaves 55 cases that involve some type of professional misconduct. The highest frequency type of discipline case is the mismanagement of countertransference with 18. That means that **33% of the VBSW discipline cases are mismanagement of countertransference involving sexual misconduct type cases.**

2. Termination of Services Therapeutic Abandonment?

- Once a therapist contracts to provide care to a patient, the therapist is legally and ethically bound to continue with care until the treatment relationship ends:
  - By mutual consent of the therapist and patient
  - The therapist withdraws with proper notice
  - The therapist transfers care to another mental health provider
  - The therapist services are no longer needed

- Vicarious Liability for Social Work Supervisors
- Known Higher Risk Areas of Liability for Supervisors
- Seven Step Process to Demonstrate Meeting a Procedural Standard of Care

ETHICAL DECISION-MAKING PROTOCOL
(SEE HANDOUT)

1. Identify the ethical issues, including the social work values and duties that conflict.
2. Identify the individuals, groups, and organizations that are likely to be affected by the ethical decision.
3. Tentatively identify all possible courses of action and the participants involved in each, along with possible benefits and risk for each.
4. Thoroughly examine the reasons in favor or and opposed to each possible course of action, considering relevant: ethical theories, principles, and guidelines, codes of ethics and legal principles, social work practice theory and principles, personal values (including religious, cultural, and ethnic values and political ideology).
5. Consult with colleagues, and appropriate experts (such as agency staff, supervisors, and agency administrators, attorneys, ethics scholars, and ethics committees)
6. Make decision and document the decision making process.
7. Monitor, evaluate and document the decision.

The Social Work Ethics Audit, A Risk Management Tool, By Fredric G. Reamer, NASW Press, Washington, D. C. 2001

TEN BASIC STEPS TO MANAGE COUNTERTRANSFERENCE

1. Regardless of your theoretical orientation, become educated about transference and countertransference.
2. Limit physical contact and self-disclosure with all clients.
3. If a client test boundaries, remind them of the importance of limits in the therapeutic process.
4. Any client request for personal information must be redirected by asking why such information is pertinent to the client's situation and therapeutic progress.
5. If you are aware of your own boundary crossing behaviors then contact a supervisor, trusted colleague or your own personal therapist to review the meaning of the behavior.
6. Conduct periodic behavioral self inventories of slippery slope behaviors.
7. If any of the slippery slope behaviors are present then contact a supervisor, trusted colleague or your own personal therapist to review the behaviors.
8. Beware that some diagnostic categories are higher risk for boundary violations, such as Borderline Personality Disorder and Dissociative Identity Disorder
9. If treating any client with a higher risk diagnosis and you are aware of any "exceptions" you have made to your usual practice then contact a supervisor, trusted colleague or your own personal therapist to review the exceptions.

10 If you are aware of any sexual attraction to any client contact a supervisor, trusted colleague or consultant to review the feeling of attraction and document in the client record your consultation.

Self Assessment
Clinical Boundary Questionnaire

(see handout)

A tool for self assessment of slippery slope behaviors. It could be used in supervision also. This tool helps to raise the issue of boundaries and management of any early warning sign of boundary crossings.

Clinical Social Work Association Code of Ethics

(see handout)

I. General responsibilities of Clinical Social Workers
II. Responsibility to Clients
III. Confidentiality
IV. Relationship with Colleagues
V. Fee Arrangements
VI. Responsibilities to the Community
VII. Research and Scholarly activities
VIII. Public Statements

"An Ethical LCSW Complies With The Law"

- There are exceptions when the law and an ethical principal conflict and the LCSW must decide which direction to follow.
- In order to comply with the law one must know the law. Remember two old adages:
  - "Ignorance of the law is no excuse"
  - "If it is not written down it did not happen"
- What is an LCSW to do? (Short of going to law school- not really sure that would help)

Code of Virginia & Federal Law/Regulation

- **Joe's Code of Virginia, Federal Law/Regulation "In A Box"**

A collection of statutes that most frequently apply to issues of concern to LCSW's in day to day practice.

Addresses some of the following questions:

- Does the law offer client communication confidentiality? § 8.01-399
- Do LCSW's have "privileged communication" with clients? § 801-400.2
- Can I charge a fee for a request to produce a copy of records? § 8.01-413
- What are the criteria for involuntary commitment? § 16.1-345
- Does a parent of an under 18 year old have a right to a copy of the record? § 20-124.6

More Questions 1

- If the child is over 18, attending college, on the parent's health insurance and attending college, does the parent have a right to the record? § 32.1-127.1:03
- What do I do when I get a subpoena? §32.1-127.1:03
- What do I do when I get a Subpoena Duces Tecum? § 32.1-127.1:03
- Can I get paid for my time appearing in court? Virginia State Bar: Rules for Professional Conduct, Rule 3.4
- What if the attorney says I am just a "fact witness" not an "expert witness"? Virginia State Bar: Rules for Professional Conduct, Rule 3.4

More Questions 2

- What are the 5 things that the Virginia Duty to Warn statute require me to do if I determine that there is an imminent threat to an identifiable third party? OR a threat to property? § 54.1-2400.1
- When do I have an "affirmative duty" to take an action and when will taking an action remove me from any "immunity" protections? For Example: § 54.1-2400.1, § 54.1-2400.4, § 63.2-1509 and §32.1-127.1:03

What about HIPAA- Health Insurance Portability and Accountability Act?

Privacy Rule	Security Rule
The Privacy Rule standards address the use and disclosure of individuals' health information—called "protected health information" by organizations subject to the Privacy Rule — called "covered entities," as well as standards for individuals' privacy rights to understand and control how their health information is used.	Administrative Safeguards
	Physical Safeguards
	Technical Safeguards

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