



Breining Institute
COLLEGE FOR THE ADVANCED STUDY OF ADDICTIVE DISORDERS

CONTINUING EDUCATION (CE) COURSE MATERIAL

Course No. CE1204P1 – Professional Ethics and Confidentiality: General Requirements

COURSE OBJECTIVE

To study the legal and moral issues involved in confidentiality; and an investigation of those laws dealing with drug-testing, host liability, driving while intoxicated, and other legal and ethical issues in addiction counseling.

COURSE MATERIAL

Host Liability Laws ("Dram Shop Laws")

Individuals, agencies, companies, saloons, etc. who knowingly serve an alcoholic beverage to an obviously intoxicated person may be held liable for injury or damage done by that individual.

Drinking Driver Laws: (State laws address this issue.)

California: January 1, 1990 = BAL/BAC that reaches .08 prima facie evidence of impaired/drunken driving. Privilege to drive includes implied consent to test.

BAL (Blood Alcohol Level) or **BAC** (Blood Alcohol Content)

= amount of grams of alcohol per 100 milliliters of blood

gram = .035 ounce = approx. one metal paper clip

A tenth of a gram (.1) = a tenth of a paper clip

35/10,000 of an ounce; .08= 28/10,000 of an ounce

Liter=91% of a quart; milliliter = 1/1000 of a liter

100 milliliters = deciliter = 2 tenths of a pint=18%/pint=

2.88 ounces (3 ozs.)

Ergo: DUI = 28 parts of alcohol to 10,000 parts of blood

DUI Fines, Costs and DMV requirements to reinstate License (California)

First Offender DUI / DWI :

\$1,200 fine + 30 days suspended license + 3 month DUI program

Multiple DUI/ DWI :

\$ 1,800 fine + 6 month suspension + 18 month DUI program

The California State Legislature removed a lot of discretion from the courts, which were considered too lenient, and gave vast new powers to the Department of Motor Vehicles (DMV) to suspend or restrict a person's license, and not return it until the Driving-under-the-Influence (DUI) program was completed.

Most judges respect the wishes of the people, but there are still a few who allow a reduced plea of "wet reckless", or allow the offender to continue to drive, but the vast majority are very tough on the DUI offender, and the resultant 20% drop in fatalities is testament to the effectiveness of these very strong and definite Drinking Driver laws.

In 1998, the Calif. State Legislature allowed the DMV and the Courts to increase the educational part of the DUI school to 6 months, from the usual 3 months if the BAL of the offender was .2 or over. At the same time, a regulation was enacted to allow persons with a BAL of .1 or less to plead to a "wet-reckless" offense, and only have to attend a six-week school instead of the normal 90-day school.



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Legal Issues in CD Treatment

Standards for client care must be spelled out in written policies and procedures: if an agency or individual deviates from those, a presumption of negligence, a wrongful act, or a breach of contract may arise. If standards of care are not promulgated and written, charges of administrative negligence can be charged. "Negligence" is non-deliberate error or omission; willful wrongdoing is another matter.

Implied contract exists when clinical services are provided and a professional relationship is created.

The law characterizes relationship between counselor and client as a:

Fiduciary relationship, with the powerful party, the therapist, as the fiduciary - the one who must place the client's interests first, and to act for the client's benefit.

Implied warranties: There exists an implication of Competence, Due Care and Confidentiality whenever one puts oneself out as an expert or professional in a given field of endeavor.

Treatment: Means to take all those steps necessary to effect a cure, including examination, diagnosis, and application of remedies. If actions outside of these are taken (socializing, sex, etc.), the action is not considered treatment, and therefore is not covered by malpractice insurance.

Implied warranty of cure: Unless expressed or promised, the law does not create an implied warranty of cure, but does require that services be provided properly and without negligence.

Telephone Treatment: A contractual responsibility can arise from a phone conversation: e.g., a caller discloses information that a competent professional should know that immediate service is necessary to prevent harm; the failure to act in an appropriate timely fashion is a breach of due care. A clerk, secretary, receptionist without knowledge of emergency and referral services can be a liability.

Good Samaritan Laws:

A clinician who renders aid in an emergency, if not negligent, and if not paid, is immune from liability. An individual is NOT obligated to render aid to anyone not a client, but if aid is given, the aid-giver must exercise ordinary care and not abandon the victim until other aid arrives.

Terminating / Concluding Care:

If both parties agree to end treatment, the care contract expires, depending on appropriate follow-up, if necessary. If a client "drops out", therapist could continue to be clinically responsible, depending on circumstances or reason for sudden termination. If termination is symptomatic of behavior, therapist must exercise due care to encourage client to reconsider or at least assure safety. A call and/or letter stating therapist's view of client's best interests should be made.

Abandonment is a breach of contract and a form of negligence. Abandonment occurs when a therapist precipitously and unilaterally terminates the relationship with a client, through failing to respond to a client's needs in a timely fashion, negligently breaking appointments, or failing to provide a suitable back-up when not available.



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Termination may be initiated by a therapist if the client's best interests are not being served; the client does not seem to be improving; a conflict of interest arises; or an impairment occurs. A referral for substitute therapy must be made if services are still deemed necessary, and if services are not available, the therapist may be required to continue. The concept of termination must be introduced to the client, along with options and feelings being explored. Adequate records and information must be provided to successor therapist, and time allowed to transfer.

Informed Consent

Except in an emergency, consent is required before treatment is given. **Uninformed consent is no consent at all.** The client/patient must be informed about: 1) Nature of condition being treated; 2) Treatment alternatives available; 3) Foreseeable risks of various alternatives (including risk of refusal); 4) Potential benefits of treatment, without promises or guarantees.

Forms and appropriate wording:

- 1) Diagnostic labels NOT necessary
CD: "Alcoholic", "Addict" okay
MH: "Paranoid", "Borderline" not okay ... should use other phrases: "relationship problems", "feeling persecuted"
- 2) If alternatives thought to be not helpful, therapist not obligated to reveal resource. (EST, CRT, RR, TCA, etc.)

Clinician must use best judgment in determining what information to give client, and what information to withhold. Adequate notes are vital.

Questions about **incompetent informed consent** may be eased by having a person evaluated for competency and getting legal advice. A court decision, with an appointed guardian or trustee may NOT be sufficient.

In an emergency, Medical treatment may be tendered without consent; but in mental health, consent may be required, even by separate court order.

California law allows commitment for a person's health and safety, or the public's, up to 72 hours in a safe environment (5150 facility), but longer than that requires court order.

Power of Attorney

Any competent adult may appoint any other competent adult as attorney-in-fact, and grant that other person a GENERAL POWER OF ATTORNEY to enter into contracts or perform other legal functions on his/her behalf.

A SPECIFIC or SPECIAL POWER OF ATTORNEY may be granted to perform certain specific, designated functions, such as making treatment decisions. Time limits are imposed and stated.

Ethical and Legal Treatment Issues:

Transference and Countertransference Responsibility

Due to transference, the client may be unable to make reasonable, rational decisions in matters concerning the therapist; and the therapist, as fiduciary, may not enter into financial, social, or sexual relationships with client.



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The therapist is expected to recognize transference and counter-transference, and to respond appropriately. *Failure to properly handle is malpractice.*

Transference = Phenomenon whereby one identifies another as some early figure in life and responds to that person as if he/she were that earlier figure.

Countertransference = A primarily unconscious emotional response of the therapist to the client's transference.

Conflict of Interest

Exists when the therapist has his/her own agenda for own sake, rather than client's interest. Seeking a personal advancement or benefit through a client, breaches the fiduciary role. Exploiting a client or clinical relationship to the benefit of the therapist, even if client gives permission creates a conflict of interest. (For research or publication or demonstration, a clinician may use a case only anonymously, without exploitation, and with composite study when possible.)

No business, dual relationships, sexual contacts, social contacts with clients. No business, dual relationships, sexual contacts, social contacts with client's significant others.

Confidentiality Laws

The Hughes Act of 1970 established rules and laws of confidentiality to protect persons seeking treatment and to reduce the stigma of alcoholism.

Alcohol abuse treatment records protected by: **42 U.S.C. 290dd-3**

Drug abuse treatment records protected by: **42 U.S.C. 290ee-3**

Regulations implementing both in **42 C.F.R. Part 2, eff 8-10-87**

Confidentiality = *sine qua non* for CD Counselors

A treating person MAY NOT REVEAL ANY INFORMATION about client without specific written consent to release information.

The Consent Form must include the following:

The name of the person or program permitted to make disclosure;

The name of the person or program permitted to receive disclosure;

The name of the client; The reason or purpose for the release must be stated; How much and what kind of information must be stated; A specific expiration date or event must be stated;

Notification prohibiting redisclosure; Signature of client with date of consent

Exceptions:

- ☐ Child abuse, mandated reporting for most, but not all.
- ☐ Court Order - specific information, reason must be stated;
- ☐ Medical Emergency - only specific information necessary;
- ☐ Danger to another person: Risk to client or others, Illegal acts, threats

Example: Disturbance at Treatment Facility: Police called and arrive to settle problem. "Is this guy a patient of yours?" Treatment provider may not provide information unless medical or other emergency present.



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Subpoena not sufficient ... must be Court Order, signed by Judge, stating reason and specific information requested.

Information Gathering

A therapist may LISTEN to anything anyone has to say about a client, if germane to the client's needs, but may not respond or share information with that person unless consent has been given.

The counselor owes a duty of loyalty to the client to share what has been said about him/her. Failure to inform the client of third party activity may be considered a breach of the fiduciary duty to the client.

Group or Conjoint Therapy Issues

In family or group therapy, what is said in such a setting is known by all, but what may be said in individual settings and then kept from others must be understood by all prior to such an event-taking place.

A contract of understanding must be established between the counselor and all members of the group to honor confidentiality of what is revealed in group.

A "wronged" member of group may sue a member who breaches that trust.

If therapist notes are kept, different color paper can aid in restricting who has access to one's own records.

Collection of Unpaid Bills

When billing a client, the statement "Services rendered" ought to be used, with no indication of what those services were. The date and charges are indicated, .. that's all.

Past clients, terminated or otherwise, require continued confidentiality.

Illegal or Unsafe Information

Unless an exception is made and understood, the counselor may not disclose illegal acts or unsafe activities without permission of the client.

Example: Airline steward who knows of pilot who has blackouts;
 Client is stealing corporate secrets from employer;
 Client knows of drug dealer within company

Legal advice is required for action to be taken or avoided.

(Watch for transference issues ... "why are you telling me this?")

Intended or planned criminal activity

It is the duty of all citizens to prevent commission of a felony, but federal law requires a court order to notify a possible victim. By arranging a prior agreement, the counselor may be allowed disclosure and thereby eliminate apparent conflict between a client's right to confidentiality and the community's need to protect itself.

Tarasoff v. Regents decision:(1976-Calif.) Establishes a DUTY to protect third persons who are foreseeable victims of the client from violence. Notify potential victim, police or other institution. Prior agreement will allow disclosure.

AIDS and STD come under the Tarasoff case in California.



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Child Abuse Reporting

State law lists "mandated reporters" that include health, law enforcement, social service workers, and child welfare workers that **MUST** report child abuse or neglect.

Chemical dependency counselors are **not** included on this list, but if your agency or supervisor or license mandates it, you may come under this law.

Federal law of 1987 provides for reporting when state law requires it.

Self-reporting should be encouraged, along with getting legal advice.

Privileged Communication

A few relationships that depend on trust to survive are recognized as so important to the community that maintaining them is considered more important than the outcome of a legal case.

Professional Liability

Legal responsibility for damages arising out of one's professional practice include:

- ☐ Malpractice
- ☐ Intentional Torts
- ☐ Breach of Contract
- ☐ Premises liability
- ☐ Equipment liability

Vicarious Liability

There may be a legal responsibility of one person for the wrongful acts of another.

"Respondeat Superior " = let the master answer = the employer must answer for the negligent acts of employees. Referring a client to a harmful or inappropriate treatment may result in Vicarious Liability.

Wrongful Act

Any person harmed by breach of contract, negligence, or dangerous condition has a cause of action (basis for a lawsuit)

Malpractice Risks

A counselor is not required to carry malpractice insurance, but the costs are so small and the risks so potentially great, that it would be foolish not to carry such coverage.

Some of the "wrongs" covered by malpractice insurance include:

- Lack of Informed Consent
- Inadequate description of risks of treatment
- Negligent evaluation
- Negligent treatment
- Abandonment
- Wrongful disclosure
- Failure to prevent harm
- Abuse of therapeutic process
- Vicarious liability

Additional coverage might be obtained to cover such issues as what are called Errors and Omissions.



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Errors are actions reasonably not done, mistakes that might be made, and/or the poor execution of an obligation.

Omissions include the failing to do or act reasonably.

An Errors and Omissions clause might be added to your malpractice policy, but it is not necessary, seldom used, and not usual in our practice.

Counselors who are members of a state association associated with NAADAC may obtain malpractice insurance through the national organization at a very reasonable cost (about \$ 150 per year) for \$ 1 million coverage. Counselors who have advanced degrees (PhDs. mainly), or are practicing psychotherapy are not eligible for this low cost insurance. Their risks are substantially greater than the certified counselor and must obtain coverage through another carrier.

SUGGESTED ADDITIONAL READING

Ethics for Addiction Professionals, by Bissell/Royce

Federal Register: June 9, 1987 42 CFR, Part 2, 52:110

Confidentiality: Guide to Federal Laws, by Legal Action Center

ACKNOWLEDGEMENTS

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CONTINUING EDUCATION (CE) EXAMINATION QUESTIONS

Course No. CE1204P1 – Professional Ethics and Confidentiality: General Requirements

You are encouraged to refer to the Course Material when answering these questions. Choose the best answer based upon the information contained within the Course Material. Answers which are not consistent with the information provided within the Course Material will be marked incorrect. A score of 70% correct answers is required to receive Continuing Education credit. GOOD LUCK!

QUESTIONS

1. "Host Liability Laws:"
 - a. Impose liability for parties with more than 50 people.
 - b. Impose liability for knowingly serving alcohol to an obviously intoxicated person.
 - c. Apply only to bars and liquor stores.
 - d. Apply only to private individuals serving alcohol.
2. A "Fiduciary Relationship" exists between:
 - a. A Therapist and his/her client.
 - b. Between clients.
 - c. Between Therapists.
 - d. A client and his/her sibling.
3. "Good Samaritan Laws:"
 - a. Excuse anyone from offering assistance to an injured individual.
 - b. Obligate everyone to offer assistance to an injured individual.
 - c. Limit the liability of one who assists an injured individual.
 - d. Allow a person to abandon a victim even after commencing care.
4. Care for a client may not be terminated by a therapist:
 - a. When the client's best interest is not being served.
 - b. When a conflict of interest arises.
 - c. When the client does not seem to be improving with the treatment given.
 - d. When it becomes inconvenient for the therapist to make appointments.
5. "Informed consent" should include which of the following information conveyed to the client:
 - a. The nature of the condition being treated.
 - b. Treatment alternatives that may be available to the client.
 - c. Foreseeable risks of various treatment alternatives, including the risk of no treatment.
 - d. All of the above.
6. "Transference" may occur when:
 - a. A client transfers money from his/her checking account to pay for therapist treatment.
 - b. The therapist transfers a client to another therapist, for the client's best interest.
 - c. A client identifies the therapist with another person in the client's life.
 - d. The therapist advances his/her own agenda, rather than the client's.



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7. A "Conflict of Interest" most often occurs:
 - a. Whenever a therapist accepts compensation for rendering treatment to a client.
 - b. When a therapist exploits a clinical relationship for the benefit of the therapist.
 - c. A and B.
 - d. Neither A nor B.

8. Written consent to release any information about a client must include which of the following:
 - a. Name of person or entity permitted to receive the information.
 - b. Name of person or entity permitted to make the disclosure.
 - c. Notification prohibiting redisclosure of the information.
 - d. All of the above.

9. Exceptions to the requirement that written consent must precede disclosure about a client's treatment does not include which of the following:
 - a. Court order, signed by the judge, which identifies the specific information to be disclosed.
 - b. Imminent danger.
 - c. Collection agency collecting on client's past due bills to therapist.
 - d. Medical emergency.

10. "Respondeat superior" means:
 - a. The therapist is the dominant figure.
 - b. Let the buyer beware.
 - c. Let the master answer.
 - d. The client owes a duty of honesty to the therapist.

This is a ten-question examination. Answer Questions 1 through 10 for full CE credit in this course. Questions 11 through 21 have been omitted.