

They Didn't Teach us about this in Grad School: Overlooked Ethical and Legal Pitfalls in Psychotherapy

Fall Psychiatric Symposium 2025

Written and Presented by:

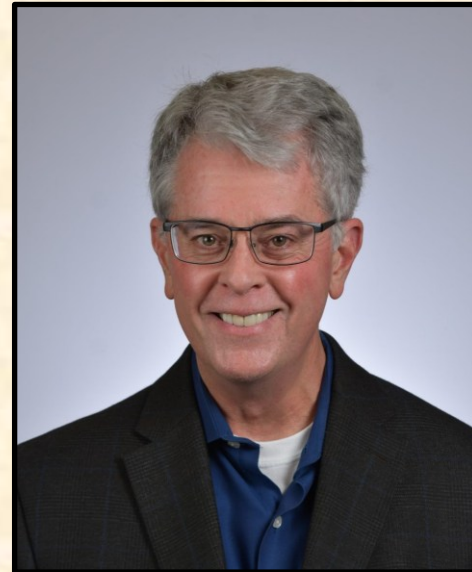
Terry A. Casey, Ph.D.

Licensed Psychologist, HSP (#1975 TN)

Terry A. Casey, Ph.D., Licensed Psychologist, HSP (#1975 TN)

Renaissance Counseling & Psychological
Specialists

[Email: Rencounselingt@gmail.com](mailto:Rencounselingt@gmail.com)



Introduction

Disclaimer & Cautions

- The presenter is not an attorney and none of the information or comments in this seminar is intended to provide legal advice.
- Laws vary significantly from one state to another and can change frequently. **Recommendation:** Clinicians should obtain continuing education regarding their specific state's laws annually, if possible and maintain membership in a state-level professional association that will keep its members apprised of changes in laws, regulations and codes of ethics/conduct.
- Legal situations are often highly individualized and may require the assistance of a qualified attorney who is licensed in your state and has appropriate expertise in mental health issues.

Introduction

My professional roles as a faculty member, continuing education provider, and consultant have provided me with interactions with a wide range of those in mental health professions, from graduate students to clinicians who have been practicing for 40 years or more. Over time, I have become aware of a variety of ethical, legal, and practice issues that seem to be seldom addressed in graduate programs, probably due to the limits of time. If these issues are not covered in the clinician's continuing education, then an adequate awareness and understanding of these issues can continue for years into clinicians' careers. Sometimes that awareness comes about only as the result of the clinician experiencing a problematic event or situation, sometimes with painful consequences, that is, a pitfall.

This program seeks to illuminate some of the more notable pitfalls or hazards that have come to my attention, especially those that tend to have adverse consequences. As the materials will show, these pitfalls occur across a variety of professional contexts and areas of practice. My hope is that this program will help participants avoid as many of these pitfalls as possible.

They Didn't Teach us about this in Grad School

Overlooked Ethical and Legal Pitfalls in Psychotherapy

1. Standard of Care
2. Business associates and BAAs
3. Handling Subpoenas and Court Orders
4. Minors and Parents
5. Social Media
6. Online Counseling Companies
7. Life Coaching
8. Supervision
9. Teletherapy and Interjurisdictional Practice
10. All Vignettes

Part 1

Standard of Care

Overlooked Pitfalls

Standard of Care

Standard of care is one of those topics that, although mentioned at times in the classroom, at conferences, and continuing education programs is often not fully explained or understood. However, it is extremely important that clinicians fully understand this aspect of practice.

Pitfall:

Limited understanding of the meaning and importance of standard of care

Standard of Care

Understanding standard of care

Surprisingly, many codes of ethics do not contain the term *standard of care*. Perhaps this is because it may be considered more a legal term rather than an ethical term but as emphasized in some of the major codes of ethics above, laws and regulations should be part of the decision-making process. The relevance of the standard of care to ethical decision making is emphasized by Wheeler and Bertram (2019) in *The Counselor and the Law*, “the *standard of care* requires that you [the professional counselor] engage in careful clinical decision making and use a decision-making model.”

Standard of Care

What exactly is standard of care?

A precise definition of standard of care can be elusive. The standard of care can be thought of as “the yardstick against which your professional behavior will be evaluated” (Wheeler & Bertram, 2019). The standard of care applied to a specific mental health professional is commensurate with the degree of knowledge, skill, and professional awareness that would typically be expected by comparable counselors in a similar situation (Wheeler and Bertram, 2019). The standard of care is often an important factor in a legal context such as a civil suit.

Standard of Care

The one-size-fits-all assumption

A common misunderstanding, even among experienced clinicians, is that the standard of care applies to all clinicians in the same way; as the word “standard” would suggest. However, the standard of care is not a one-size-fits-all concept. Rather, the **standard of care applied to a specific mental health professional is commensurate with the degree of knowledge, skill, and professional awareness that would typically be expected by comparable counselors in a similar situation** (Wheeler and Bertram, 2019). As a result, an experienced and highly educated therapist with additional training in a specialty field would be held to a higher standard of care than a new, less experienced clinician.

Standard of Care

Consequences of not meeting the standard of care

If a clinician is accused of malpractice, this may lead to a complaint filed with licensing/regulatory board and/or a civil lawsuit. Because the mission of licensing boards is to protect the public, they will want to ascertain if the clinician has been acting in accordance with the relevant laws, rules, and ethics. Establishing the standard of care for the clinician thus becomes central to the proceedings.

In a civil suit regarding alleged malpractice, the attorney for the plaintiff would likely want to establish what the standard of care should be for the defendant (the clinician) and produce persuasive evidence that the defendant's actions were not in keeping with this standard.

Standard of Care

Avoiding consequences

Self-check : Would my current policies, procedures and practices meet the standard of care that would likely be applied to me?

Professional behavior that is not ethical or legal will not be viewed as meeting the standard of care.

A clinician's professional behavior should of course always be in compliance with:

- federal and state laws
- licensing rules and licensing board policies
- the applicable code of ethics/conduct

Standard of Care

Professional standards

In addition to laws and codes of ethics it is also important for clinicians to act in keeping with formalized professional standards. Professional **standards** can be understood as **expectations or requirements** set forth by national professional associations or other authoritative professional entities.

“Standards include any criteria, protocols, or specifications for conduct, performance, services, or products in psychology or related areas, . . . Standards are considered to be mandatory and may be accompanied by an enforcement mechanism” (APA, 2025a).

A few examples are below.

- Standards for educational and psychological testing. (APA, 2014).
- Social work case management standards. (NASW, 2013).
- Standards for technology in Social Work Practice. (NASW, 2017b).

Standard of Care

Best practices guidelines

Though the two are sometimes confused and similar in some ways, the concept of best practices is different from standard of care. Primarily, best practices are more aspirational in nature than the standard of care (a requirement). Best practices might be thought of as established models of excellence. These are often described in *guidelines* for best practice which are usually set forth by national professional associations or similar entities. respected and influential sources in the profession; one example being national professional associations.

The APA (2025a) describes guidelines as “pronouncements, statements, or declarations that suggest or recommend specific professional behavior, endeavor, or conduct for psychologists or for individuals or organizations that work with psychologists. **In contrast to standards, guidelines are aspirational in intent**” [emphasis added].

Best Practice Guidelines -- where to find them

National professional associations, including their various specialty divisions, are only one example of such sources. For example, the APA (2025a) website provides aspirational guidelines which “suggest or recommend specific professional behavior, endeavor, or conduct” for its members. These guidelines include clinical practice, ethical and legal issues, and much more. Guidelines from a source like the APA can be useful for Psychologists [and other professionals] who want to documentation support for decisions they made or the actions they taken. Likewise, professional counselors, social workers, and marriage and family therapists can point to guidelines from the ACA, NASW, and AAMFT, respectively as support for their actions and decisions.

Practice tip

It may not be intuitive to do so but look outside of your own profession’s association of licensing boards. Go also to the websites of other profession’s associations of licensing boards for guidance and resources. Often, the information you find there will be relevant to other professions, as well.

Standard of Care

Best Practice Guidelines -- where to find them

Associations of licensing boards. The members of these associations are not individuals but state licensing boards themselves. The websites for these associations often have a rich variety of resources (including best practice guidelines), many of which are available to the public. These resources can be helpful for: (a) education/increasing competencies, (b) policy development and (c) citing as part of a decision-making process.

- American Association of State Counseling Boards (AASCB) (AASCB, 2024). aascb.org
- Association of Social Work Boards (ASWB, 2025) <https://www.aswb.org/about-aswb/>
- Association of Marriage and Family Therapy Regulatory Boards (AMFTRB, 2021, September) <https://amftrb.org/>
- Association of State and Provincial Psychology Boards (ASPPB). (n.d.). (Accessed 2025, October). <https://asppb.net/about-us-asppb-mission-vision-values-what-we-do/>

Practice tip: Visit the websites of associations above that are not affiliated with your profession.

Standard of Care

Best Practice Guidelines -- where to find them

Examples of guidelines for best practices

- Teletherapy & Telesupervision Guidelines. Association of Marital and Family Therapy Regulatory Boards (AMFTRB). (2021, August).
- Social media guidelines. Association of State and Provincial Psychology Boards (ASPPB). (2021a, October).
- Telepsychology guidelines. American Psychological Association. (2013).
- Supervision guidelines. Association of State and Provincial Psychology Boards (ASPPB). (2021, September).
- Grief counseling best practices. (ACA, 2024).
- Best practices for counseling first responders. (ACA, 2021).
- Clinical Practice Guideline for the Treatment of Posttraumatic Stress Disorder. (APA, 2025b).

Standard of Care

Best Practice Guidelines

Benefits

Following established best practice guidelines in any professional situation usually goes a long way toward establishing that the clinician was behaving within the standard of care. Accordingly, if a clinician is viewed as not following best practice guidelines this could lead to the clinician's actions being examined more closely.

Self check: Are my clinical services in keeping with best practice? Could I provide supporting evidence?

Part 2

Business Associates & BAAs

Overlooked Pitfalls

Business Associates & BAAs

An Urgent Situation

Dr. Gray is the Clinical Director for a large non-profit counseling organization with 25 licensed therapists. Three years ago Dr. Gray began outsourcing the processing of clients' insurance claims to Angela who owns a small business that specializes in this type of work. One weekend Dr. Gray is surprised to receive a text from Angela regarding an urgent matter and they soon have a phone conversation. During the phone call Angela tells Dr. Gray that her laptop containing his organization's clients' information has been stolen. Nothing like this has ever happened to Angela or Dr. Gray. They discuss the potential legal, ethical, and financial ramifications. As a first step, they mutually agree that they will seek legal/ethical consultation as soon as possible and keep each other informed. After the phone Dr. Gray makes a list of issues that are going through his mind.

If you were Dr. Gray, what thoughts might you put on your list?

Business Associates & BAAs

An Urgent Situation

Possible items on Dr. Gray's list

- What liability do I and our organization have?
- Will our insurance policy apply?
- Does Angela have liability?
- Clients' privacy – what are the clients' rights? What am I required to do?
- Does this qualify as a significant/large HIPAA breach that I must report?
- Could this have an impact on clients' treatment?
- Could this affect existing claims in some way?
- Could clients sue us?
- other?

Business Associates & BAAs

Pitfall:

Failure to have a Business Associate Agreement in place as required by HIPAA.

Business Associates & BAAs

What are business associates and BAAs?

A definition from the US Department of Health and Human Services (HHS, 2021a):

A business associate is a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information.

A business associate also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate.

(HHS.gov, 2021a, October) <https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>) (Cornell Law School, LII, 2021) <https://www.law.cornell.edu/cfr/text/45/160.103>

Business Associates & BAAs

Business associate functions and activities include: claims processing or administration; data analysis, processing or administration; utilization review; quality assurance; billing; benefit management; and practice management. Business associate services are: legal; actuarial; accounting; consulting; data aggregation; management; administrative; accreditation; and financial.

Examples of Business Associates:

- A third-party administrator that assists a health plan (a covered entity) with claims processing.
- A CPA firm whose accounting services to a health care provider (a covered entity) involve access to protected health information.
- An attorney whose legal services to a health plan (a covered entity) involve access to protected health information.
- A consultant that performs utilization reviews for a hospital (a covered entity).

(HHS, 2021e) <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>) (Cornell Law School, LII, 2021) <https://www.law.cornell.edu/cfr/text/45/160.103>

Business Associates & BAAs

Consequences of not having BAAs in place

- Clients'/patients' private information may be obtained and used by others.
- Potential malpractice lawsuit by client/patient against clinician. Others, such as the clinician's employer or supervisor may also be named in the suit.
- The inconvenience, stress, and expense associated with reporting a HIPAA breach and the potentially lengthy follow-up process with HHS.
- Complaints may be filed with the clinician's licensing board which could result in disciplinary actions against the clinician.

Business Associates & BAAs

BAA non-compliance example

Covered Entity: Pharmacy Chain Issue: Impermissible Uses and Disclosures; Business Associates

A complaint alleged that a law firm working on behalf of a pharmacy chain in an administrative proceeding impermissibly disclosed the PHI of a customer of the pharmacy chain. OCR investigated the allegation and found no evidence that the law firm had impermissibly disclosed the customer's PHI. However, **the investigation revealed that the pharmacy chain and the law firm had not entered into a Business Associate Agreement, as required by the Privacy Rule to ensure that PHI is appropriately safeguarded** [emphasis added]. Without a properly executed agreement, a covered entity may not disclose PHI to its law firm. To resolve the matter, OCR required the pharmacy chain and the law firm to enter into a business associate agreement.

(HHS, 2021d, October) <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/examples/all-cases/index.html#case30>

Business Associates & BAAs

Business Associate Agreement Resources

- BAA example. An example of a BAA directly from the U.S. Department of Health and Human Services see HHS.gov (2021a, October) at <https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>
- BAA template. A template for BAAs may be found at online sources such as Comply Assist (2025).

Part 3

Handling Subpoenas and Court Orders

Overlooked Pitfalls

Information in this section is not intended nor should be construed to be legal advice but only to increase awareness about these issues and provide guidelines and resources.



Handling Subpoenas and Court Orders

The Subpoena

Denise is an LCSW who is employed full-time at a large non-profit counseling organization. Shanna was one of Denise's clients for approximately six months during the previous calendar year. During this period of time, Denise had treated Shanna for an adjustment disorder related to the on-going custody battle between her and her now ex-husband, Patrick, regarding their daughter Adrianna (12). Today, Denise received a subpoena for Shanna's records from Patrick's attorney. She also receives a voice mail from someone who identifies himself as Patrick. In the voicemail he states that he knows that Shanna was in counseling with Denise and that many of their conversations centered on their daughter, Adrianna. He states that he is entitled to any information that may be relevant to Shanna's current ability to adequately care for Adrianna. After reviewing the subpoena carefully and listening again to the voicemail, Denise decides to consult with Dr. Brown, the Director of the counseling center, before taking any action.

Put yourself in the role of Dr. Brown. What are the issues? What would you do?

Handling Subpoenas and Court Orders

Pitfall:

Releasing a client's records in response to a subpoena without proper consent or authorization (or otherwise mishandling a subpoena).

This pitfall can result in allegations of malpractice resulting in serious legal and consequences for the clinician and possibly for any involved supervisor or employer. Additionally, licensing boards may take disciplinary action against the clinician's license. Secondary effects can include an increase in professional liability insurance premiums or inability to obtain liability insurance.

Handling Subpoenas and Court Orders

Essentials for avoiding pitfalls

#1 – Differentiating a subpoenas from a court order

Differentiating between a subpoena and a formal court order is essential to protecting a client's privacy which is protected by both federal law (e.g., HIPAA) and state privilege laws. The following guidelines and related resources may help mental health professionals avoid making serious mistakes regarding their clients' records (i.e., Protected Health Information [PHI]) and related private information.

Handling Subpoenas and Court Orders

Essentials for avoiding pitfalls

Subpoena ad testificandum -- A written order to compel* an individual to give testimony on a particular subject, often before a court, but sometimes in other proceedings. (Cornell Law School, LII, 2024a, June)

<https://www.law.cornell.edu/wex/subpoena>

Subpoena duces tecum – A *subpoena duces tecum* is a type of subpoena that requires* the witness to produce a document or documents pertinent to a proceeding. A command filed through a court by an attorney for the recipient of the subpoena to provide a specific documents such as a client's records. (Cornell Law School, LII, 2024b, June).

https://www.law.cornell.edu/wex/subpoena_duces_tecum

*Re: Many laws have exceptions. Privileged information is a good example of an exception.

Handling Subpoenas and Court Orders

Essentials for avoiding pitfalls

#2 – Review subpoenas carefully

Examine the details of the subpoena closely, especially the name of the client and dates for records being sought. It is not uncommon for there to be mistakes. For example, a subpoena may be seeking records between specific dates which do not match any records in that client's name.

Handling Subpoenas and Court Orders

Essentials for avoiding pitfalls

#3 – Privilege

“Privilege communication laws [state statutes] protect clients from having confidential communications with their counselors disclosed in a court of law without their permission (Garner, 2014).” “For communication to be privileged, a statute must have been enacted that grants privilege to a category of professionals and to those whom they serve” (Remley & Herlihy, 2025). Further, “the statutory privilege belongs to the client, rather than the counselor” (Boumil, Freitas, & Freitas, 2012).

Handling Subpoenas and Court Orders

Essentials for avoiding pitfalls

#4 – Validity of a subpoena

A subpoena is not considered to be “valid” if it is seeking privileged information (e.g., PHI). Further, “. . . to be valid, a subpoena should generally allow sufficient time to respond to the demand for materials and provide for some time for the opposing side to quash such a demand if appropriate.” Also, if the subpoena is issued through a court that has no jurisdiction the subpoena may not be valid. “A subpoena issued in one state, for example, may not be legally binding on a psychologist who lives and works in another state.” APA’s Committee on Legal Issues (2016a) <https://www.apa.org/monitor/2016/07-08/ce-corner>

#5 – Contact the client

Although there can be exceptions, in most cases it is best to contact the client to determine whether the client wants to release the information being sought by the subpoena. It is almost always a good idea to remind the client that their records are protected (privileged) by law and suggest that the client contact an attorney.

- ❖ If the client decides to provide the information being sought by the subpoena, document the client's decision and then you are free to proceed with providing the information requested.
- ❖ If the client decides not to release the information requested by the subpoena, document the client's decision and advise the client to have their attorney respond to the subpoena. The attorney may then proceed to have the subpoena quashed on the basis that the information being sought is privileged.

Suggestion: Even if the client agrees to comply with the subpoena, ask the client to sign your HIPAA-compliant *authorization* (i.e., release of information form) allowing you to provide the information requested in the subpoena.

Handling Subpoenas and Court Orders

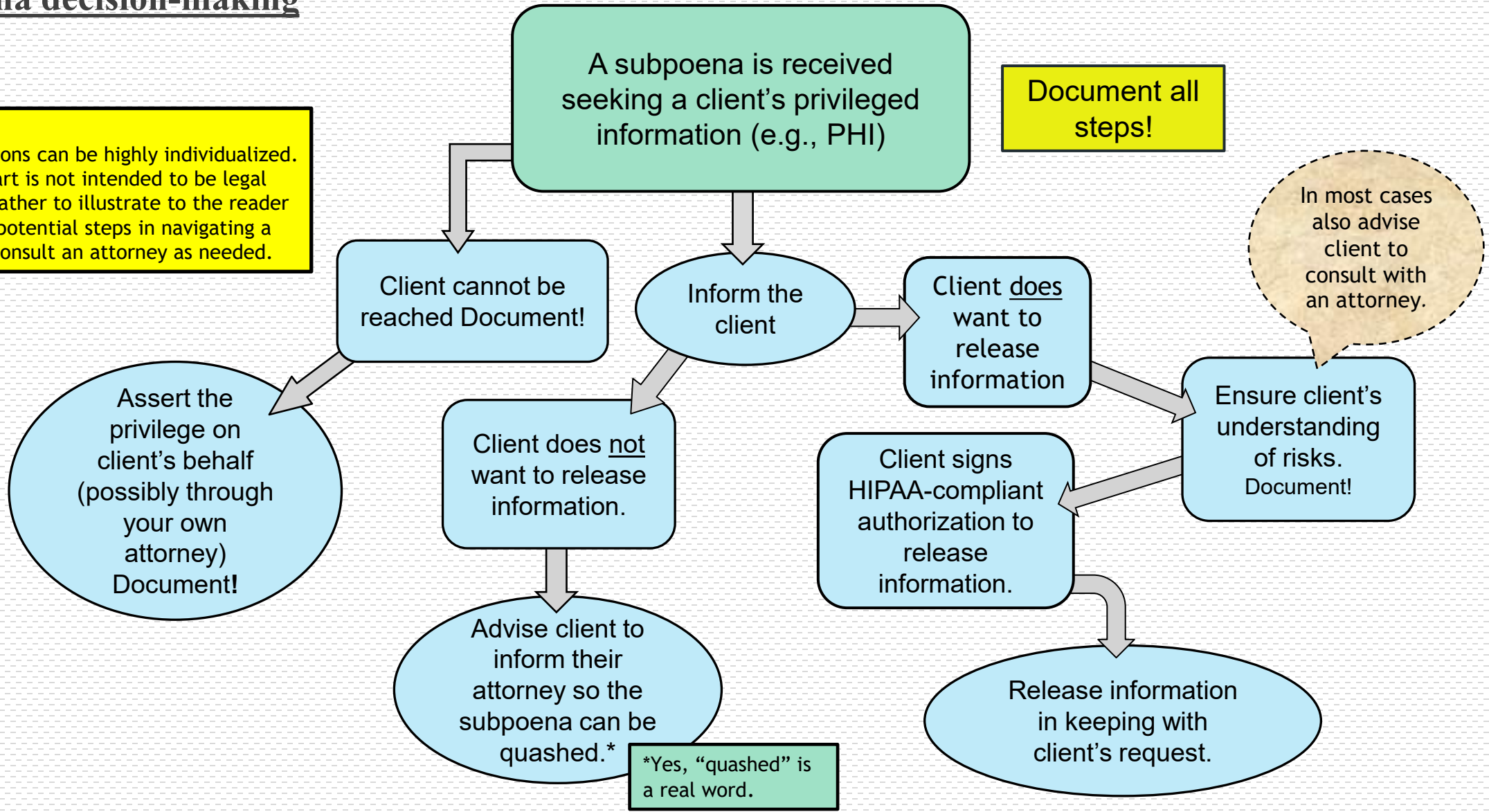
Essentials for avoiding pitfalls

#6 – Fiduciary relationship

Clinicians have a fiduciary relationship with their clients which means that the clinician “promises to act in the best interests of the client and the client accepts the trust” (Wheeler & Bertram, 2019). If you are not able to contact the client you are generally expected to assert the privilege on the client’s behalf and respond to the subpoena, but not supply the privileged information being sought by the subpoena (Remley & Herlihy, 2025). In this case, you may also want to consult your own attorney about this process.

Subpoena decision-making

Important!
Legal situations can be highly individualized. This flowchart is not intended to be legal advice but rather to illustrate to the reader the various potential steps in navigating a subpoena. Consult an attorney as needed.



Consequences of releasing a client's PHI without authorization or consent

- The client may file a complaint against the clinician with the state licensing board.
- The client could potentially initiate a malpractice civil suit against the clinician.

Note: In both cases, standard of care would likely become a focus.

Court orders

A court order signed by a judge is different from a subpoena from an attorney. Mental health professionals must comply with court orders from a judge in a court that has jurisdiction. You cannot be sued for complying with a court order.

Suggestions

- Inform your client that you have received a court order and advise the client that you are legally required to comply with the court order. Recommend that the client, in turn, contact their attorney.
- If necessary, inform the client that you may be consulting with your own attorney regarding the court order and, if possible, obtain a HIPAA-compliant authorization (i.e., release of information) from the client to document that you will be consulting with your attorney.
- Consult with one or more trusted colleagues and your own attorney about the specifics of the court order. In some cases, it may be advisable to do this before contacting your client.
- Use a decision-making model (e.g., the Multiple Perspective Model) and document the process.

Practice Tip – As part of the informed consent process with all new clients, obtain written consent to consult with colleagues within your organization/practice as well as your own attorney in cases involving subpoenas and court orders regarding the client's records or other private/privileged information.

Handling Subpoenas and Court Orders

Resources regarding handling subpoenas and court orders

- American Psychological Association Committee on Legal Issues. (2016b). Strategies for Private Practitioners Coping With Subpoenas or Compelled Testimony for Client Records or Test Data or Test Materials. *Professional Psychology: Research and Practice*, Vol. 47(1), Feb 2016, 1–11. Read the full article, which includes all citations and appendices, at www.apa.org/about/offices/ogc/private-practitioners.pdf (American Psychological Association Committee on Legal Issues, 2016b)
- Borkosky, B. G. (2020). Responding to subpoenas: Written objections. *Professional Psychology: Research and Practice*, 51(4), 352.
- American Psychological Association Committee on Legal Issues. (2016a). Protecting patient privacy when the court calls. <https://www.apa.org/monitor/2016/07-08/ce-corner>

Part 4

Minors and Parents

Overlooked Pitfalls

Minors and Parents

Pitfall #1:

Different states, different laws

It is important to keep in mind that laws regarding minors' rights and parents' rights vary significantly from state to state. This includes, for example, the age and circumstances under which minors may provide their own consent and parents' access to child's records. Parents who have lived in another state are likely to assume that the laws are the same in the state where you are providing services to their child.

Suggestion: At screening or intake ask if the parent(s) have lived in another state where the laws may be different.

Minors and Parents

Pitfall #2:

Non-custodial parents have the right to access to their children's records

Custodial parents who have sole legal authority to give consent for the child's treatment, by default, have access to the child's records. However, these parents often assume that the other ("non-custodial") parent does not have access to the child's records, but this is usually not the case. Non-custodial parents retain the right to access their child's healthcare records.

Suggestion: As part of the informed consent process, providers should inform the custodial parent of the above before services are provided to the child. Document!

Part 5

Social Media

Overlooked Pitfalls

Social Media

Danielle, Ashley, and Social Media

Danielle is a counselor who recently received her license as an LPC/MHSP. In her short career, Danielle has primarily worked with children and adolescents. Though Danielle currently works for a large community mental health center at which her client, **Ashley** (15 y.o.), has been in counseling for four weeks for treatment for anxiety and depression. When Ashley began seeing Danielle, they were already casual friends on a popular social media platform. After their third counseling session Danielle began receiving an increased amount of contact from Ashley via social media which was related to recent counseling sessions and seems to reflect increased feelings of frustration with her life and hopelessness. For the past several nights, Danielle has been worried about Ashley and has been checking Ashley's social media often for anything that might be related to her.

You are the Clinical Director at the mental health center as well as Danielle's clinical supervisor. Danielle informs you about the situation during a supervision session.



Pitfall #1:

Having a social media connection/relationship with clients

Multiple relationships

The overriding concern regarding social media relates to multiple relationships, or at the very least, blurred boundaries between the therapist and client. Virtual relationships with clients may be considered as being equivalent to face-to-face in-person relationships and be prohibited by ethics or licensing rules.

For example, the ACA (2014) Code of Ethics states,

Personal Virtual Relationships With Current Clients

*Counselors are **prohibited** from engaging in a personal virtual relationship with individuals with whom they have a current counseling relationship (e.g., **through social and other media**) [emphasis added].*

Social Media

Having a social media connection/relationship with clients

The NASW (2017) makes the following comments regarding the potential problems surrounding social media in its Code of Ethics, Section 1.06:

“Social workers should avoid accepting requests from or engaging in personal relationships with clients on social networking sites [emphasis added] or other electronic media to prevent boundary confusion, inappropriate dual relationships, or harm to clients.”



Social Media

Pitfall #2:

Viewing a client's social media

While it may not be illegal for a therapist to do so, “creeping” on a client’s social media raises ethical issues regarding privacy and boundaries.

“Counselors respect the privacy of their clients’ presence on social media unless given consent to view such information” (ACA, 2014).

Seeking out and viewing a client’s social media content can also lead to additional unanticipated problems. Some thoughts to consider:

- ❖ Therapists normally obtain the clinically necessary information regarding clients only from the usual sources (e.g., intake forms, interview, client’s self-state history, direct observation, testing, etc.).
- ❖ Obtaining information regarding a client that a therapist would not ordinarily have can pose dilemmas for the therapist. Such information may be obtained by chance or by the deliberate efforts of the therapist (e.g., viewing the client’s social media).

Suggestion: Do not access a client’s social media (even if the client has given permission to do so.) . . . Remember the law of unforeseen consequences -- “I never saw that coming!”

Social Media

Viewing a client's social media



Self-check questions regarding use of social media

- How might my client feel (or what might my client think) if she/he discovered that I had been looking at her/his social media? How would I feel if I discovered that my client had been looking at my social media?
- If I learn something about my client from his/her social media account that conflicts with what my client is telling me how might this affect the therapeutic relationship?
- Would I be able to reliably remember the source of specific information about my client? Did he or she tell me this information or, unbeknownst to my client, did I see it on my client's social media?
- Would it be appropriate/ethical to go to the street outside a client's residence and spend time observing the activities going on there? Would this be any different than creeping on a client's social media?



Social Media Resources

The two resources below from the Association of State and Provincial Psychology Boards (ASPPB) may provide helpful guidance in the development of internal policies at healthcare organizations and private practices. Specifically, they may aid in forming a formal social media and communication policy to which patients/clients would agree as part of the informed consent process. Additionally, they may also prove to be valuable references when documenting decisions about specific challenging situations involving social media and related topics/issues.

- ❖ Guidelines for the Use of Social Media by Psychologists in Practice and by Psychology Regulatory Bodies (Association of State and Provincial Psychology Boards, 2021, October) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://asppb.net/wp-content/uploads/final_oct_9-2020_guidelines_.pdf
- ❖ White Paper on Guidelines for the Use of Social Media by Psychologists in Practice and by Psychology Regulatory Bodies (Association of State and Provincial Psychology Boards, 2021, October) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://asppb.net/wp-content/uploads/11.20.2020_white_paper_on_gu.pdf

Part 6

Online Counseling Companies

Overlooked Pitfalls

Online Counseling Companies

Pitfall:

Company policies may have a negative impact on the counselor or client

Clinicians should be cautious and ask lots of specific questions (Abramson, 2023, March). There can be a variety of specific pitfalls, for example:

- Will you be matched with clients who are not located in a state in which you are not licensed? The company's protocol for assigning clients to therapists may not address this.
- If you decline to accept out-of-state clients will this affect your potential for being assigned future clients, in general?
- Are there company policies that will affect your ability to continue with a client if you leave the company or if your client moves to another state.
- Will the clients' private information be appropriately protected? One well known company, BetterHelp, has had actions taken against it by the Federal Trade Commission (2023a).

Online Counseling Companies

One example:

The “FTC says online counseling service BetterHelp pushed people into handing over health information – and broke its privacy promises”

(Federal Trade Commission, 2023a)

Read the details at: <https://www.ftc.gov/business-guidance/blog/2023/03/ftc-says-online-counseling-service-betterhelp-pushed-people-handing-over-health-information-broke>

Online Counseling Companies

The Federal Trade Commission Business Blog (FTC, 2023a) provided the following comments regarding BetterHelp's practices:

“In the hierarchy of confidential data . . . details about a person's mental health may be among the most confidential. But according to the FTC, that's not how online counseling service BetterHelp viewed it. The FTC says the company repeatedly pushed people to take an Intake Questionnaire and hand over sensitive health information through unavoidable prompts. And it promised to keep that information private through statements like: *'Rest assured – any information provided in this questionnaire will stay private between you and your counselor.'* But from the FTC's perspective, a truthful statement would have been *'Rest assured – we plan to share your information with major advertising platforms, including Facebook, Snapchat, Criteo, and Pinterest.'*”

(Federal Trade Commission, 2023a). <https://www.ftc.gov/business-guidance/blog/2023/03/ftc-says-online-counseling-service-betterhelp-pushed-people-handing-over-health-information-broke>

Why did the FTC take action against BetterHelp?

In 2017, BetterHelp allegedly uploaded the email addresses of all current and former clients to Facebook – nearly 2 million in total – to target them with ads to refer their Facebook friends to BetterHelp for mental health services. During another period, the FTC says BetterHelp disclosed to Facebook for advertising purposes the previous therapy of 1.5 million people who visited or used BetterHelp’s site. The source of that information: their responses to the intake question “Have you been in counseling or therapy before?”

(Federal Trade Commission, 2023b) In the FTC Business Blog available at: <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers-data-including-sensitive-mental-health-information-facebook>

Supplemental information

Press releases from the Federal Trade Commission

March 2, 2023 -- “FTC to Ban BetterHelp from Revealing Consumers’ Data, Including Sensitive Mental Health Information, to Facebook and Others for Targeted Advertising
BetterHelp will be required to pay \$7.8 million for deceiving consumers after promising to keep sensitive personal data private, agency says”

(FTC, 2023b) <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers-data-including-sensitive-mental-health-information-facebook>

May 6, 2024 -- BetterHelp Customers Will Begin Receiving Notices About Refunds Related to a 2023 Privacy Settlement with FTC. Approximately 800,000 people have begun receiving notices regarding the settlement. “BetterHelp agreed to pay \$7.8 million to settle FTC allegations that the online therapy provider used and shared consumers’ health data for advertising”

(FTC, 2024) <https://www.ftc.gov/news-events/news/press-releases/2024/05/betterhelp-customers-will-begin-receiving-notices-about-refunds-related-2023-privacy-settlement-ftc>

Suggestions

Do your own research

- Thoroughly review the company's website. If you have difficulty finding answers to many of your questions this may be significant about the company's openness or thoroughness in addressing important issues.
- Research the company online. Look for client reviews and other information but keep in mind the objectivity, veracity, or accurateness of the information you find. See
- Talk to those who have worked for the company to find out what their experience was.
- Talk to company representatives at conferences. (Tip: Have questions prepared in advance.)

Suggestions (cont'd)

- *Caveat emptor* (let the buyer beware). Both the counselor/therapist and the client should be cautious.
- Read any potential agreement/contract with an online counseling company carefully.
- Ask questions! At conferences, seek out the company's booth in the exhibit hall and talk with the representatives of the company
- Talk with other therapists who have worked for the company.
- Does something sound a little too good to be true? Pay attention to your gut.
- Consult regarding any misgivings you may have.

Part 7

Life Coaching

Overlooked Pitfall

Life Coaching

Pitfall:



Legal protections for clients' privacy.

Federal privacy laws (e.g., HIPAA) and state privilege laws do not apply to life coaches.

- “Privilege communication laws protect clients from having confidential communications with their counselors disclosed in a court of law without their permission” (Garner, 2014).
- “For communication to be privileged, a statute must have been enacted that grants privilege to a category of professionals and to those whom they serve” (Remley & Herlihy, 2025).
- “... there are no state or federal laws nor regulations that govern coaching as a profession or define a scope of practice for those who offer coaching services” (CAMFT, 2023). <https://www.camft.org/Resources/Legal-Articles/Chronological-Article-List/coaching-vs-therapy>

Federal privacy laws and state privilege laws do not apply to life coaches

Privileged communication, privacy, and confidentiality

In contrast to psychotherapy provided under state regulations for mental health services, coaching is not regulated by the state or federal government.

“There are no laws that ensure that information a coaching client shares during the course of a coaching relationship will remain private. This is another important distinction that explicitly distinguishes a coaching relationship from a psychotherapeutic one” (CAMFT, 2023).

<https://www.camft.org/Resources/Legal-Articles/Chronological-Article-List/coaching-vs-therapy>

Privacy laws -- Federal privacy laws and state privilege laws do not apply to life coaches

Ethics and Life Coaches

Life coaches in many cases make a voluntarily personal commitment to following a code of ethics/conduct from a life coaching association or other entity that requires its members to adhere to its ethics code. **However, there are no legal requirements to do so; moreover, a personal commitment to an organization's ethics code does not carry with it any legal protection of clients' records.**

Conclusion

Life coaching is not regulated by the state. There are no legal standards for being a life coach or presenting oneself to the public as a life coach. Even though life coaches may commit to confidentiality in keeping with a code of ethics in compliance with rules for members of a life coaching association, there should be no presumption that the records of life coaches' clients will be afforded the legal protection provided by state privilege statutes for clients/patients of healthcare professionals.

Whereas health care records have special protection under state and federal laws, **the records of life coaches' clients are vulnerable to subpoenas.** Moreover, since there are no state licensing rules or statutes governing coaches there is no legal requirement for life coaches to inform their clients of the above lack of legal protection.

Part 8 Supervision

Overlooked Pitfalls

Supervision

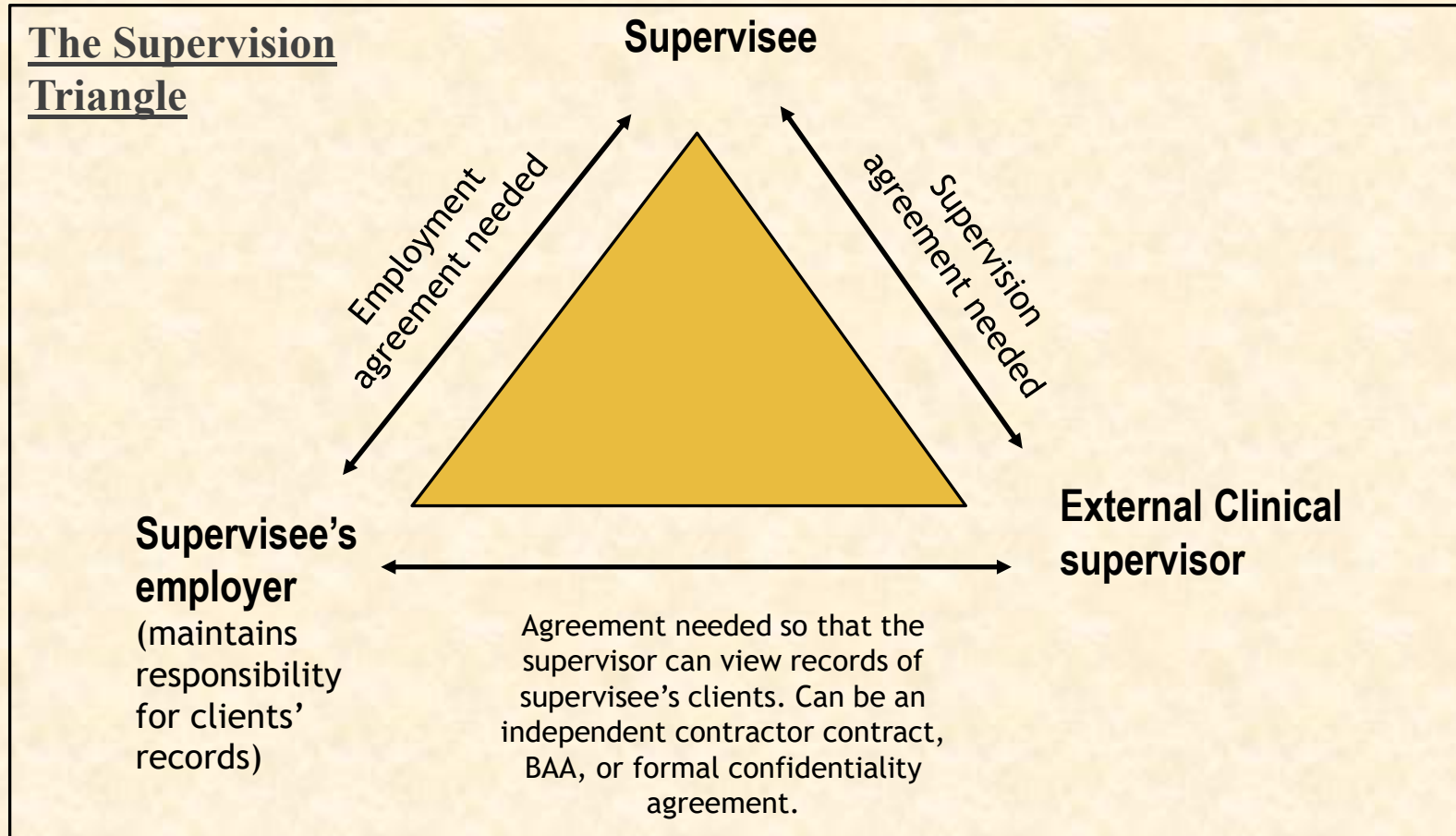
Pitfall #1:

Outside supervisors / supervision triangles

- Pitfall for the supervisee's employer. The supervisee may be instructed by the outside supervisor to act in ways that create liability for the supervisee's employer
- Pitfall for the outside supervisor – The supervisor is vulnerable if they do not have appropriate access to the records of clients served by the supervisee. These records are maintained (and the responsibility or) the supervisee's employer.

Supervision

Outside supervisors / supervision triangles



Supervision

Pitfall #2 – Supervisor competency issues.

These can include, for example, inadequate training and/or experience regarding the:

- populations being served by the supervisee
- presenting problems/diagnoses of the supervisee's clients
- therapeutic techniques used by the supervisee

Supervision

Supervisor competence issues

Consequences

Inadequate supervisor training and experience regarding a supervisee's techniques and client populations can negatively affect client care and can potentially even harm to the client/patient. This can lead to malpractice civil suits or complaints being filed with licensing boards.

Self-check: Could I provide evidence of my competence to supervise the populations, presenting problems/diagnoses, issues, techniques, pertaining to the work of your supervisees?

If not, it may be advisable for the supervisor to consider obtaining consultation and/or coordinating supplemental supervision for the supervisee.

Supervision

The Supervision Triangle

Antoine, MMFT, is working toward licensure while employed at Main Street Family Services,* a non-profit counseling center. His clinical supervisor is **Marcus**, LMFT, a qualified supervisor who is in private practice in the same community. Antoine has been working individually with a client, **Mitchell**, on a weekly basis for over five months. The focus of counseling has been Mitchell's relationship issues with his partner, **Alexa**. Alexa showed up with Mitchell three sessions ago and has been included in Mitchell's counseling sessions since then. Yesterday, Alexa came by the office and after talking with the staff member at the front desk, completed a release of records request form which was in turn forwarded to Antoine. Having received the form, Antoine discusses the situation with Marcus later that same day. Marcus tells Antoine that he must comply with Alexa's request. Antoine immediately sends copies of the progress notes from the last three sessions to Alexa. A few days later Antoine receives an angry voicemail from Mitchell, saying that his privacy has been violated and he is considering suing Antoine, his supervisor and his employer as reporting Antoine and his supervisor to their licensing board. Antoine immediately goes to consult with **Lynne**, LMFT, Director of Counseling at Main Street Family Services.

What was the pitfall in this situation? If you are Lynne, Antoine, or Marcus, what will you need to do?

*A fictitious organization.

Part 9

Teletherapy and Interjurisdictional Practice

Pitfalls

Teletherapy and Interjurisdictional Practice

Pitfall #1

Failure to ask for the client's physical location at the beginning of a teletherapy session.

Clinicians need a safeguard against unintentionally and illegally practicing across state lines. Fortunately, there is an easy way to avoid this pitfall. First, be sure to have an established protocol for teletherapy. As part of the protocol, at the beginning of every session ask the client where they are physically/geographically located at that moment and document the client's response.

Teletherapy and Interjurisdictional Practice

Pitfall #2

Not having a professional liability insurance policy that covers practicing across state lines

Do not assume that your policy will cover you if you are providing services from or to a jurisdiction in which you are not licensed or otherwise have a privilege to practice (e.g., through an interstate compact). In many cases a policy will cover the policy holder as long as they are practicing legally. There is no assurance that your policy would cover you if you were practicing illegally across state lines.

Important! Practicing illegally across state lines would likely not be considered as meeting the standard of care.

Teletherapy and Interjurisdictional Practice

Teletherapy Dilemma

Michelle, an LCSW, opened a private practice six months ago and has been seeing most of her clients through teletherapy. She posts information about her practice and teletherapy services on her personal social media page. Vanessa sees the posts, messages Michelle through the social media app and soon becomes a teletherapy client with Michelle. Over the next two months they have five teletherapy sessions. During the sixth session Vanessa says something that makes Michelle suddenly realize that although the home address given by Vanessa at intake is in the same town as Michelle's office, Vanessa has been living in the nearby adjacent state with her ill mother and that all their teletherapy sessions have occurred while Vanessa was in the other state. Vanessa mentions that she expects to be living with her mother for the foreseeable future and she emphasizes how much she is depending on the teletherapy sessions continuing.

Part 10

All Vignettes

Business Associates & BAAs

An Urgent Situation

Dr. Gray is the Clinical Director for a large non-profit counseling organization with 25 licensed therapists. Three years ago Dr. Gray began outsourcing the processing of clients' insurance claims to Angela who owns a small business that specializes in this type of work. One weekend Dr. Gray is surprised to receive a text from Angela regarding an urgent matter and they soon have a phone conversation. During the phone call Angela tells Dr. Gray that her laptop containing his organization's clients' information has been stolen. Nothing like this has ever happened to Angela or Dr. Gray. They discuss the potential legal, ethical, and financial ramifications. As a first step, they mutually agree that they will seek legal/ethical consultation as soon as possible and keep each other informed. After the phone Dr. Gray makes a list of issues that are going through his mind.

If you were Dr. Gray, what thoughts might you put on your list?



Handling Subpoenas and Court Orders

The Subpoena

Denise is an LCSW who is employed full-time at a large non-profit counseling organization. Shanna was one of Denise's clients for approximately six months during the previous calendar year. During this period of time, Denise had treated Shanna for an adjustment disorder related to the on-going custody battle between her and her now ex-husband, Patrick, regarding their daughter Adrianna (12). Today, Denise received a subpoena for Shanna's records from Patrick's attorney. She also receives a voice mail from someone who identifies himself as Patrick. In the voicemail he states that he knows that Shanna was in counseling with Denise and that many of their conversations centered on their daughter, Adrianna. He states that he is entitled to any information that may be relevant to Shanna's current ability to adequately care for Adrianna. After reviewing the subpoena carefully and listening again to the voicemail, Denise decides to consult with Dr. Brown, the Director of the counseling center, before taking any action.

Put yourself in the role of Dr. Brown. What are the issues? What would you do?

Social Media

Danielle, Ashley, and Social Media

Danielle is a counselor who recently received her license as an LPC/MHSP. In her short career, Danielle has primarily worked with children and adolescents. Though Danielle currently works for a large community mental health center at which her client, **Ashley** (15 y.o.), has been in counseling for four weeks for treatment for anxiety and depression. When Ashley began seeing Danielle, they were already casual friends on a popular social media platform. After their third counseling session Danielle began receiving an increased amount of contact from Ashley via social media which was related to recent counseling sessions and seems to reflect increased feelings of frustration with her life and hopelessness. For the past several nights, Danielle has been worried about Ashley and has been checking Ashley's social media often for anything that might be related to her.

You are the Clinical Director at the mental health center as well as Danielle's clinical supervisor. Danielle informs you about the situation during a supervision session.

Supervision

The Supervision Triangle

Antoine, MMFT, is working toward licensure while employed at Main Street Family Services,* a non-profit counseling center where he sees all his clients. His clinical supervisor is **Marcus**, LMFT, a qualified supervisor who is in private practice in the same community. Antoine has been working individually with a client, **Mitchell**, on a weekly basis for over five months. The focus of counseling has been Mitchell's relationship issues with his partner, **Alexa**. Alexa showed up with Mitchell three sessions ago and has been included in the counseling sessions since then. In the last session, tensions were running high and verbal conflict between Mitchell and Alexa ensued. Yesterday, Alexa came by the office and after talking with the staff member at the front desk, completed a release of records request form which was in turn forwarded to Antoine. Having received the form, Antoine discusses the situation in his supervision session with Marcus later that same day. During the supervision session **Marcus tells Antoine that Alexa has right to a copy of her records and that Antoine must comply with Alexa's request.** Antoine immediately copies the progress notes from the last three sessions and **mails them to Alexa.** A few days later Antoine receives an angry voicemail from Mitchell, saying that his privacy has been violated and he is considering suing Antoine, his supervisor and Main Street Family Services as well as reporting Antoine and his supervisor to the MFT licensing board. Antoine immediately goes to consult with **Lynne**, LMFT, Director of Counseling at Main Street Family Services.

You are Lynne. Why was there legal/ethical vulnerability? What will you need to do?

*A fictitious organization.

Teletherapy and Interjurisdictional Practice

Cross-state Dilemma

Michelle, an LCSW, opened a private practice six months ago and has been seeing most of her clients through teletherapy. She posts information about her practice and teletherapy services on her personal social media page. Vanessa sees the posts, messages Michelle through the social media app and soon becomes a teletherapy client with Michelle. Over the next two months they have five teletherapy sessions. During the sixth session Vanessa says something that makes Michelle suddenly realize that although the home address given by Vanessa at intake is in the same town as Michelle's office, Vanessa has been living in the nearby adjacent state with her ill mother and that all their teletherapy sessions have occurred while Vanessa was in the other state. Vanessa mentions that she expects to be living with her mother for the foreseeable future and she emphasizes how much she is depending on the teletherapy sessions continuing.

End