

Did You Know?

New Tennessee Laws and Ethical-Legal Hazards

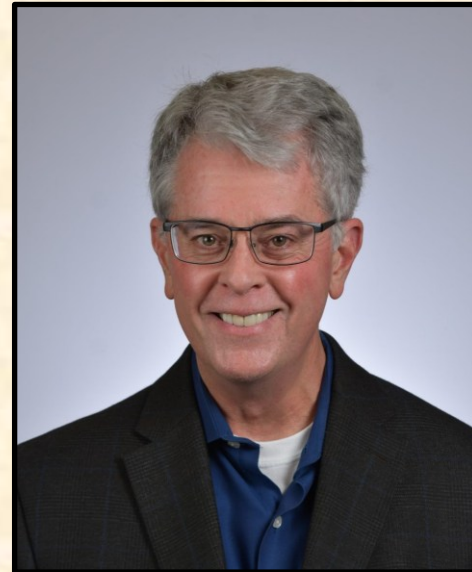
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Disclaimer

- The presenter is not an attorney and none of the information or comments in this seminar is intended to provide legal advice.
- **Caution!** **Laws vary significantly from state to state.** Make no assumptions of one state's laws being similar to those in any other state.
- 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.

Important note

This program is designed to address selected Tennessee statutes. However, it is possible that other Tennessee statutes beyond the scope of this program may have relevance or new statutes may have recently gone into effect. It is therefore recommended that a comprehensive consideration of ALL Tennessee statutes be made before making any significant decisions. When appropriate, an attorney or other competent professionals who are knowledgeable in Tennessee laws relevant to mental health providers and related issues should be consulted.

Did You Know? New Tennessee Laws and Ethical-Legal Hazards

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Supplement

Introduction

Challenges of Navigating the Legal Landscape

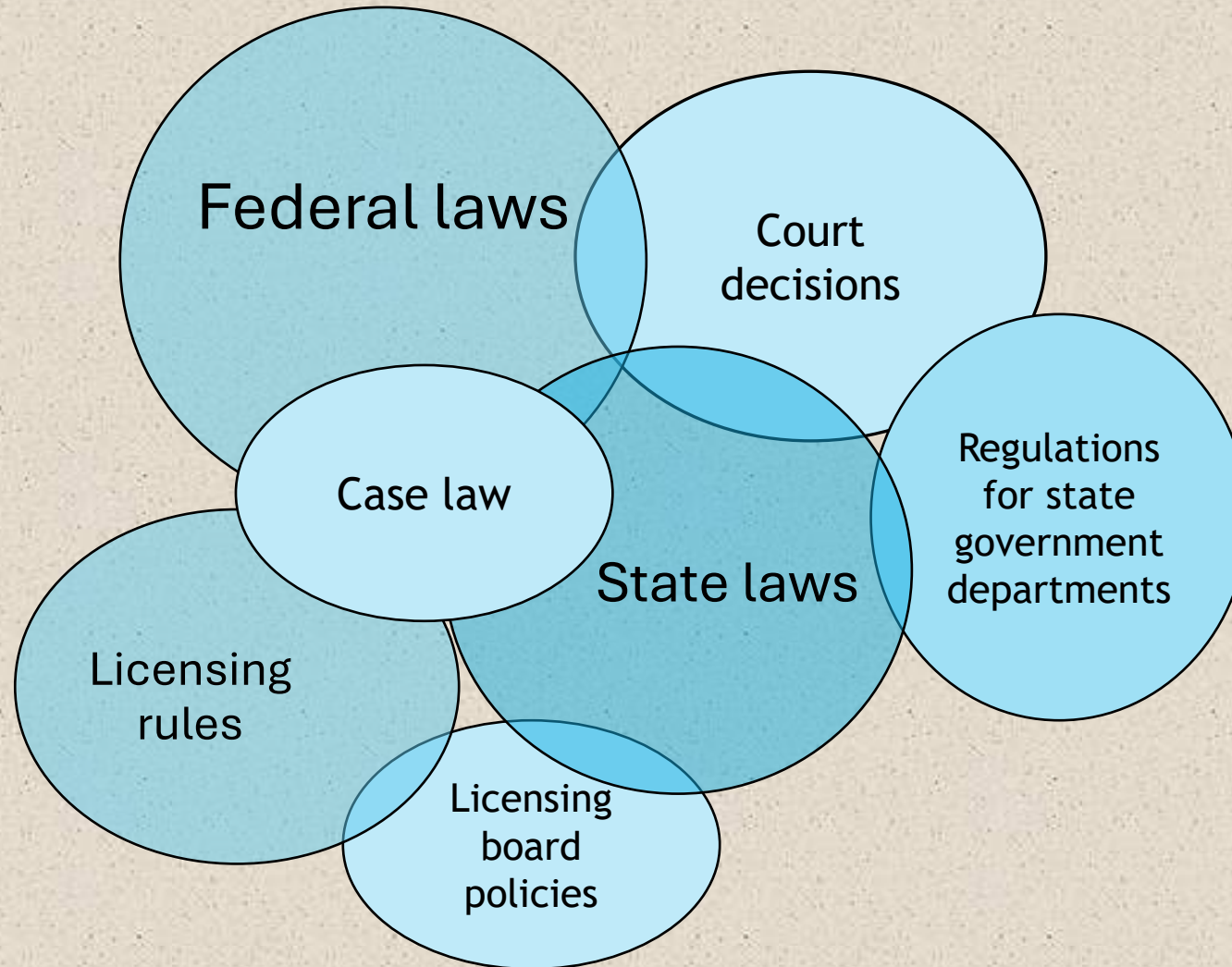
Navigating the legal
landscape is challenging



An aerial photograph of a large, intricate maze made of green hedges. The maze consists of many rectangular paths and dead ends, creating a complex, confusing pattern. In the center of the maze, there is a square opening that is slightly larger than the surrounding paths, revealing a flat, green lawn area. The text "... and confusing" is overlaid in white, sans-serif font across the upper-middle part of the maze.

... and confusing

The legal world for mental health professionals



Why is navigating laws so difficult and often frustrating?

There are a variety of reasons, for example:

- New laws in their final form may not be easy to find online. It takes time for this to happen.
- New laws often amend one or more existing laws, but this may not be readily apparent.
- Federal laws and state laws (or two state laws) sometimes come into conflict making it difficult to know which law takes precedence.
- Laws regarding the same issues (e.g., minors' rights) often vary significantly from one state to another.
- Unclear or contradictory laws are often sorted out through court decisions (remember the one role of the judicial branch of government is to interpret laws). This can take years to occur.
- Websites for finding state laws (e.g., FindLaw, JustiaLaw, Casetext) may not be up to date so you may not know if the law listed is the most recent version of the law or if the law has been amended by a new law.
- Statutes/laws frequently have exceptions. However, the exceptions may not be mentioned in the original statute; and/or may be located in an unrelated section of the state laws.
- There can be “clarification acts” (e.g., the Tennessee “Mature Minor Clarification Act”) which are intended to clear up misunderstandings, contradictory statutes, or misconceptions.

Different States, Different Laws

It is important to keep in mind that state statutes regarding many different issues are often different from state to state. This is particularly true regarding issues which pertain to working with minors (e.g., minors' age of consent; parent access to minors' records; etc.).

Important!

During the client intake process determine if the client has lived in another state. This is especially important if the client is a minor.

Definitions of Terms

It is extremely important to be aware of the state's definitions of specific terms. Legal definitions may be different depending upon the source or context. Always read carefully and do not make assumptions about the meaning specific terms. For example, in Tennessee Code 33-1-101 (State of Tennessee, 2024a) the term “*service recipient*” includes not only those who actually receive services but also individuals who have only applied for services.

Keeping up with Current Laws

Unfortunately, state laws and regulations tend to become more complex over time and changes may go into effect unexpectedly. As a result, it is recommended that providers:

- Obtain regular training regarding the laws in all states in which they practice (especially laws which pertain to working with minors and parents).
- Maintain membership in a state level professional association that keeps its members apprised of changes in state laws, regulations, and ethics.
- Identify go-to online sources which provide up-to-date summaries of complicated legal issues such as the rights of minors and parents in a specific state.
- Identify two or more professional consultation resources that are well respected maintain current contact information for each.

Use the Multiple Perspective Model[©] for navigating laws and decision-making

- Using the Multiple Perspective Model[©] (see supplement section) will document the laws, rules, ethical standards, etc. you used in arriving at your decision. This is especially helpful when dealing with legal or ethical dilemmas; situations in which the proper decision is difficult to determine; or when you have received differing opinions or recommendations.
- Practice using the Model on a regular basis. The more you use the model the more you will be able to prevent/avoid problems or mitigate negative consequences.
- Licensing boards tend to look more favorably upon license-holders who have utilized a decision-making model.

Part 1

Child Abuse Law

Tennessee

Changes to Laws Related to Child Abuse

Several Tennessee statutes pertaining to child abuse have been added or changed in 2024-2025 including the following.

1. Expanded definition of child abuse
2. Increased criminal penalties for committing child abuse
3. Extention of the statute of limitations for committing child abuse

(Tennessee General Assembly, 2025a,b,c).

It is important to keep in mind that new statutes often amend or replace previous statutes. Amended statutes are specified in the statutes below. As a result, practitioners must strive to maintain awareness of when new statutes go into effect and what previous statutes are, as a result, amended. Remember that when a law is passed it usually does not actually go into effect until a later date.

Child Abuse Statutes

Changes to Laws Related to Child Abuse

1. Expanded Definition of Child Abuse

A new Tennessee law* “expands the definition of child abuse to include a person under the age of 18 witnessing either the abuse of another child in the person's immediate family or household or domestic abuse of a member of the person's immediate family or household; specifies that reunification between a parent and a child placed in foster care due to abuse must not occur unless the parent has complied with the parent's statement of responsibilities in the permanency plan and the child has received mental health counseling. - Amends TCA Title 36; Title 37 and Title 39” (Tennessee General Assembly, 2025a).

*Effective date: 5/5/25

Go to: <https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB0973&GA=114> and search for *HB 1360*.

Child Abuse Statutes

Changes to Laws Related to Child Abuse

1. Expanded Definition of Child Abuse (cont'd)

For healthcare clinicians, this is probably the most important of the new laws since it changes what legally constitutes child abuse and therefore may affect when suspected child abuse must be reported.

This expanded definition of child abuse also has implications for the informed consent process. When informing clients/patients or their personal representatives (i.e., parents or guardians of minor clients/patients) about the limits of confidentiality when it comes to suspected child abuse, the practitioner should strive to ensure that the new expanded definition of child abuse is understood.

Child Abuse Statutes

Changes to Laws Related to Child Abuse

2. Increased Criminal Penalties for Committing Child Abuse

Effective July 1, 2025, criminal penalties for child abuse have been increased “from a Class A misdemeanor to a Class E felony for a person who commits child abuse by knowingly treating a child between 9 and 17 in such a manner as to inflict injury. Amends TCA Title 36; Title 37; Title 39 and Title 40” (Tennessee General Assembly, 2025b).

Go to: <https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB0045&GA=114> and search for *HB 0045*.

Child Abuse Statutes

Changes to Laws Related to Child Abuse

3. Increase in the Statute of Limitations for Child Abuse

A new Tennessee law, effective July 1, 2025, increases “the statute of limitations for criminal prosecution of certain child sexual abuse felonies from 25 years from the child's eighteenth birthday to 30 years from the child's eighteenth birthday; extends the statute of limitations for a civil action based on child sexual abuse from 15 years from the child's eighteenth birthday to 30 years from the child's eighteenth birthday. - Amends TCA Title 28 and Title 40, Chapter 2” (Tennessee General Assembly, 2025c)

Go to:

<https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB0973&GA=114> and search for *HB 0973*.

Part 2

Duty to Predict, Warn, or Take Precautions to Protect

Tennessee Law

Duty to Predict, Warn, or take Precautions to Protect

Duty to Warn is an Exception to Client Confidentiality

All mental health professionals receive training in the various exceptions to confidentiality. Some of the most well-known exceptions to confidentiality include the following:

- Mandatory reporting of suspected abuse/neglect of minors.
- Mandatory reporting of adults who are vulnerable (e.g., elderly, disabled, etc.)
- Clients who have intent and means to commit suicide. (Note: This is often confused with duty to warn.)
- A valid court order from a judge.
- **Duty to warn/protect those who are in danger from a mental health provider's client/patient.**

All of the above are regulated by state statutes.

Duty to predict, warn, or take precautions

The Landmark Tarasoff Case

The concept of mental health professionals having a *duty to warn* has its historic basis in the landmark Tarasoff legal case, *Tarasoff v. Regents of the University of California*. In short, as most therapists may recall, the Tarasoff case involved a psychotherapy client, last name Poddar, who was a student at University of California, Berkley. In 1969 Poddar had vocalized a threat to his university-based therapist regarding a young woman who had repeatedly declined to have a relationship with him. Her last name was Tarasoff. Poddar's threat was reported by the therapist to law enforcement along with the fact that Poddar had been diagnosed as having paranoid schizophrenia. Law enforcement questioned Poddar but subsequently released him because Poddar appeared to be rational. However, Tarasoff was never warned of Poddar's threat. Poddar later carried out his threat and killed Tarasoff.

(Remley & Herlihy, 2025)

Duty to predict, warn, or take precautions

The Tarasoff Case (cont'd)

Poddar was tried for murder but subsequently Supreme Court held that a mental health professional's duty is not solreleased on a technicality and left the country. Tarasoff's parents sued the Regents of the University of California for their daughter's death. Ultimately, the California ely to a patient but also to anyone being specifically threatened by that patient. This landmark decision led to duty-to-warn legislation being passed in most U.S. states. The court's majority opinion stated that ***“the public policy favoring protection of the confidential character of patient-psychotherapist communications must yield to the extent to which disclosure is essential to avert danger to others. The protective privilege ends where the public peril begins”*** [emphasis added].

(Remley & Herlihy, 2025)

Duty to predict, warn, or take precautions

Tennessee Statutes

Although nearly all states have duty-to-warn type laws, the specifics of these laws vary significantly from state to state.

Tennessee laws pertaining to duty to warn have existed for many years. However, some recent changes have been made to the Tennessee statutes. The “duty to warn” language in TCA 33-3-206 (State of Tennessee, 2024b) goes beyond a duty to warn intended victims by adding a duty to predict and take precautions.

**In Tennessee, the law establishes a
“duty to predict, warn, or take precautions to provide protection.”**

Important

Duty-to-warn laws vary significantly across states.

Duty to predict, warn, or take precautions

Tennessee Statutes

Overview

- When does the “duty to predict, warn, or take precautions” apply?
- The definition of intended victims has been expanded to include groups or locations where groups of people are present.
- Ways for mental health providers to discharge the duty
- Special requirements when the client/patient is a minor
- Liability protection for mental health providers

Duty to predict, warn, or take precautions

Key definitions

TCA 33-1-101 (State of Tennessee, 2024a)

Qualified mental health professional (QMHP): *Qualified mental health professional* means a person who is licensed in the state, if required for the profession, and who is a psychiatrist; physician with expertise in psychiatry as determined by training, education, or experience; psychologist with health service provider designation; psychological examiner or senior psychological examiner; licensed master's social worker with two (2) years of mental health experience or licensed clinical social worker; marital and family therapist; nurse with a master's degree in nursing who functions as a psychiatric nurse; professional counselor; or if the person is providing service to service recipients who are children, any of the above educational credentials plus mental health experience with children;

Red = TCA language

Keep in mind the importance of legal definitions of key terms.

Duty to predict, warn, or take precautions

Key definitions

TCA 33-1-101 (State of Tennessee, 2024a)

Service recipient. *Service recipient* means a person who is receiving service, has applied for service, or for whom someone has applied for or proposed service because the person has mental illness, serious emotional disturbance, or a developmental disability [emphasis added].

Note: “Service recipient” is defined more broadly than an individual who has formally become a client/patient by providing formal informed consent. Also, the meaning of “*has applied*” could be interpreted in more than one way.

Red = TCA language

Duty to predict, warn, or take precautions

When does the duty to predict, warn, or take precautions apply?

TCA 33-3-206 (State of Tennessee, 2024b)

(a) **IF AND ONLY IF**

(1) a *service recipient* has communicated to a qualified mental health professional or behavior analyst an

(A) intent for actual threat of bodily harm against a clearly identified victim, OR

(B) intent for actual threat of bodily harm against **a group of people**, including, but not limited to, students at a day care or school, people at a place of worship, and members of the service recipient's family,

AND

Key change! The definition of intended victims has been expanded to include groups.

(2) the qualified mental health professional or behavior analyst, using the reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's or analyst's specialty under similar circumstances, has determined or reasonably should have determined that the service recipient has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so, THEN ...

Red = TCA language

Warning, taking precautions, and reporting the threat

TCA 33-3-206 (cont'd) (State of Tennessee, 2024b)

THEN ...

(3) the professional or analyst **shall**

(A) take reasonable care to **warn** of or **take precautions to protect** the identified victim or group of people from the service recipient's violent behavior,

AND

(B) **report** the threat to

(i) the local law enforcement agency with jurisdiction over the municipality or county of residence of the service recipient, OR

(ii) IF the threat is general and not imminent or clearly identified, contact 988 or local crisis response service. [emphasis added]

Red = TCA language

Duty to predict, warn, or take precautions

Discharging the duty to predict, warn or take precautions

The duty to **warn or take precautions** imposed by TCA 33-3-206 (previous slides) may be discharged by the professional or service provider by:

TCA 33-3-207 (State of Tennessee, 2024c)

- (c) (1) Informing the clearly identified victim of the threat;
- (2) Having the service recipient admitted on a voluntary basis to a hospital;
- (3) Taking steps to seek admission of the service recipient to a hospital or treatment resource on an involuntary basis pursuant to chapter 6 of this title;

OR

- (4) Pursuing a course of action consistent with **current professional standards*** that will discharge the duty [emphasis added].

What exactly would be considered
“current professional standards?”

Red = TCA language

Duty to predict, warn, or take precautions

Discharging the duty to predict, warn, ... (cont'd)

Hospitalization of the client/patient can discharge the duty

TCA 33-3-206 (State of Tennessee, 2024b)

Inpatient hospitalization of the service recipient discharges the duty to warn imposed on a qualified mental health professional or behavior analyst by this section.

Red = TCA language

Duty to predict, warn, or take precautions

Discharging the duty to predict, warn, ... (cont'd)

When the client/patient is a minor

TCA 33-3-207 (State of Tennessee, 2024c)

If a patient is an **unemancipated minor**, the duty to warn may be discharged by notifying the unemancipated minor's parent, legal guardian, or legal custodian **and** satisfying the requirements of **subsection (c)** (see previous slide) [emphasis added] (State of Tennessee, 2023c).

Red = TCA language

Duty to predict, warn, or take precautions

Liability protection for the QMHP

Mental health professionals are afforded legal protection

TCA 33-3-206 (State of Tennessee, 2024b)

(b) The *qualified mental health provider* [QMHP] who acts or makes a reasonable attempt to act under this law, is not liable for damages in a civil action, subject to prosecution in a criminal proceeding, or subject to disciplinary action by a regulatory board for such act or reasonable attempt to act.

Red = TCA language



Legal protection
for QMHPs

Duty to predict, warn, or take precautions

Summary

1. Intended victim(s) may be a specific individual or a group of people.
2. Must report threat to local law enforcement with jurisdiction over the client/patient's place of residence or contact 988 or local crisis response service depending upon the specific circumstances.
3. There are several ways that the threat can be reported. See TCA 33-3- 207 (c)(1)-(4).
4. Mandatory reporting of threat by a minor client/patient to the client/patient's parent(s) or guardian(s) (according to TMA, 2024a).
5. Liability protections exist for the Qualified Mental Health Professional (QMHP).

Duty to predict, warn, or take precautions

Considerations for mental health professionals

1. Take steps to ensure that your informed consent process with clients/patients regarding exceptions to confidentiality includes the duty to predict, warn, or take precautions to provide protection.
2. Ensure that all staff are trained on Tennessee statutes pertaining to duty to predict, warn, or take precautions to provide protection.
3. Establish an assessment and decision-making policy and its related procedures regarding situations that meet (or may meet) the statutory requirements regarding duty to predict, warn, or take precautions to provide protection.

Part 3

Tennessee Laws Regarding Minors

Tennessee Law Regarding Minors in 2024

The Tennessee Families' Rights and Responsibilities Act of 2024 (FRRA)

Including consent for treatment of a minor and
access to a minor's records

Tennessee Law Regarding Minors

Tennessee Families' Rights and Responsibilities Act (FRRA)

Several new Tennessee statutes and changes to existing statutes pertaining to minors went into effect in the past year. Among the recent new statutes, the Tennessee Families' Rights and Responsibilities Act (FRRA) went into effect on July 1st, 2024 (State of Tennessee, 2024g). FRRA creates changes to laws regarding minors and parents/guardians, primarily in two interrelated areas:

- Consent for the treatment of minors
- Access to minor's healthcare records

This discussion will focus primarily on the changes that are most relevant to mental health professionals in the FRRA and other related statutes. The Tennessee Medical Association's (TMA, 2024a) Guide to the Treatment of Minors in Tennessee has reviewed recent changes to the TCA including TFRR, providing its interpretations and opinions regarding these statutes.

The Tennessee Families' Rights and
Responsibilities Act of 2024 (FRRA)
(TCA 36-8-101/104)

AN ACT to amend Tennessee Code Annotated, Title 33; Title 36; Title 37;
Title 49; Title 63 and Title 68, relative to families' rights and responsibilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF
TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, is amended by adding
the following new chapter: 36-8-101.

This chapter is known and may be cited as the "**Families' Rights and
Responsibilities Act.**"

(State of Tennessee, 2024g)

Red = TCA language

Note the various
Titles that are
amended by this
Act.

Key definitions

TCA 68-11-1802 (State of Tennessee, 2024i)

Healthcare provider

(2) Healthcare provider means a healthcare professional, healthcare establishment, or healthcare facility licensed, registered, certified, or permitted pursuant to this title, title 33, or title 68 or regulated under the authority of either the department of health or an agency, board, council, or committee attached to the department of health or by the department of mental health and substance abuse services, and that is authorized to provide health or medical care or mental health services in this state;

Red = TCA language

Tennessee Law Regarding Minors

Key definitions (cont'd)

TCA 63-1-173 (State of Tennessee, 2024e)

Minor

(4) Minor

- (A) Means an individual who has not attained eighteen (18) years of age; and***
- (B) Does not include an individual who:***
 - (i) Is emancipated pursuant to title 29, chapter 31;***
 - (ii) Needs emergency treatment pursuant to § 63-6-222;***
 - (iii) Is or was previously a member of the armed forces of the United States or a member of a reserve or national guard unit; or***
 - (iv) Is the parent of a minor child and has full custody of that minor child;***

Red = TCA language

Tennessee Law Regarding Minors

Key definitions (cont'd)

TCA 63-1-173 (State of Tennessee, 2024e)

Parent

(5) *Parent* means a biological, legal, or adoptive parent or an individual who has been granted medical decision-making authority over the child under state law;

Person

(6) *Person* means an individual, corporation, or any other legal or commercial entity, whether or not a citizen or domiciliary of this state and whether or not organized under the laws of this state.

Red = TCA language

Consent

Consent

Overview

- The emphasis in current Tennessee law is on the need for parental consent
- Mental health and medical services requiring parental consent are specified.
- There are three types of exceptions to parental consent: statutory, case law, and court orders.
- The statutes regarding case law exceptions can be confusing (e.g., special situations when the case law exception does not apply).

Emphasis on Parental Consent

General Rule – Parental consent is required

Although there are various exceptions, health care providers should keep in mind that, as a general rule they must obtain parental or legal guardian consent before treating a minor patient. Otherwise, informed consent is not established.

(TMA, 2024a)

Tennessee Law Regarding Minors

Emphasis on parental consent

The FRRA (State of Tennessee, 2024e):

provides that, except as otherwise provided by **statutory law, case law, or court order**, a healthcare provider may not take actions to treat, diagnose, prescribe, dispense, or render mental health services to an unemancipated minor without the consent of a parent (TMA, 2024a).

Services requiring parental consent

TCA Title 63, Chapter 1, Part 1, is amended by FRRA by adding section TCA 63-1-173 (State of Tennessee, 2024e) below.

(b) ... a healthcare provider, or any other person shall not knowingly take any of the following actions with regard to a minor **without first obtaining the consent of a parent of the minor:**

- (1) Treat, profess to diagnose, operate on, or prescribe for any physical ailment, physical injury, or deformity;
- (2) Prescribe, dispense, deliver, or administer any drug or medication;
- (3) Render **psychological services** specified in §§ 63-11-202 and 63-11-203;
- or
- (4) Render **counseling services** specified in § 63-22-122 [emphasis added].

Red = TCA language

Exceptions to the Need for Parental Consent

The Tennessee Medical Association's Guide to the Treatment of Minors in Tennessee (TMA, 2024a) provides the following regarding TCA 63-1-173 (State of Tennessee, 2024e):

The FRRA states that a healthcare provider, or any other person shall not knowingly take any of the [actions listed in (b)(1)-(4)] with regard to a minor without first obtaining the consent of a parent of the minor **UNLESS** the action falls under one of the following:

- **Statutory exceptions** (i.e., a Tennessee law),
- **Case law** (e.g., Mature Minor Doctrine/Rule of Sevens*)
- **Court order**

*Supreme Court of Tennessee (1987)

Blue = TMA language **Red** = TCA language

Exceptions to the Need for Parental Consent

Statutory exceptions

TCA 63-1-173 (State of Tennessee, 2024e)

(c) This section does not apply when:

- (1) A parent of the minor has given blanket consent authorizing the person or entity to perform an activity listed in subsection (b);
- (2) A government entity, healthcare provider, or any other person reasonably relies in good faith on an individual's representations that the individual is the parent of a minor or has otherwise been granted authority to make decisions regarding a minor's health care under state law;

Note: Subsections (3) – (6) contain other **statutory exceptions which** are less relevant to this discussion and are therefore omitted here.

Red = TCA language

Tennessee Law Regarding Minors

Exceptions to the Need for Parental Consent

Statutory Exception: Emancipated minors

1. Generally, emancipated minors have the legal ability to consent to their own medical treatment.
2. If for some reason recognized by state law, an emancipated minor cannot make his/her own medical decisions and someone else has the authority to make medical decisions for the emancipated minor, then the physician must treat that individual as a personal representative with respect to PHI relevant to the treatment of the emancipated minor.
 - a. An example of this situation is when the emancipated minor is unconscious due to an emergency and a relative acts as a personal representative based on the patient's advance directive or power of attorney for health care.

(TMA, 2024a)

Exceptions to the Need for Parental Consent

Case law exceptions (e.g., the Mature Minor Doctrine/Rule of Sevens)

TMA (2024a) opinion

- a. If a statutory exception does not exist, then the Mature Minor Doctrine should be considered regarding a minor's ability to consent to treatment.
 - b. In the absent of appropriate parental consent, Tennessee courts will look:
 - i. To “the age, ability, experience, education, training, and degree of maturity or judgment obtained by the minor; and
 - ii. The conduct and demeanor of the minor at the time.”
- (TMA, 2024a; Supreme Court of Tennessee, 1987).

Exceptions to the Need for Parental Consent

Case law exceptions – The Mature Minor Doctrine/Rule of Sevens

“A 1987 court decision applies when there are no specific laws governing a treatment or medical service. In that case, the Tennessee Supreme Court adopted what is often referred to as the Mature Minor Doctrine or Rule of Sevens” (TMA, 2024b) (Supreme Court of Tennessee, 1987).

The “TMA government affairs team was able to work with the sponsors of this legislation and get the exception quote added so that existing treatment of minor statutes and the Mature Minor Doctrine would continue to allow physicians to treat minor patients [in some cases] without consent” (TMA, 2024b).

“A parent CANNOT consent to the treatment of a minor child in [several] circumstances” including when “the minor patient is determined to be a ‘mature minor’ for purposes of consenting to treatment” (TMA, 2024a).

(TMA, 2024a, 2024b)

Tennessee Law Regarding Minors

Exceptions to the Need for Parental Consent

Case law exceptions

Mature Minor Doctrine/Rule of Sevens

The following are presumed regarding a minor's capacity to consent to their own health care:

- i. Under age 7 – no capacity for minor to consent to care.
- ii. Ages 7-14 – rebuttable presumption of no capacity to consent to care.
- iii. Ages 14+ - rebuttable presumption minor has capacity to consent.

(TMA, 2024a, 2024b; Supreme Court of Tennessee, 1987)

Exceptions to the Need for Parental Consent

Exceptions to exceptions

Case law exceptions -- Special cases – Exceptions to case law exceptions

Vaccinations

According to TMA (2024a) and pursuant to the Mature Minor Clarification Act TCA 63-1-165 (State of Tennessee, (2024j) “a healthcare provider may NOT provide a vaccination to a minor without the informed consent of a parent/legal guardian.” Thus, **case law exceptions** (e.g., the Mature Minor Doctrine/Rule of Sevens) **cannot be used to obtain consent from a minor regarding vaccinations** [emphasis added].

TCA 63-1-165 (State of Tennessee, 2024j)

(c)(1) A healthcare provider shall not provide a vaccination to a minor unless the healthcare provider first receives informed consent from a parent or legal guardian of the minor.

Red = TCA language

Exceptions to the Need for Parental Consent

Case law exceptions -- Special cases -- Exceptions to case law exceptions

Exception to the exceptions

Treatment of a Minor for Gender Identity Related Issues

Based upon TMA (2024a) and TCA 68-33-103, the Mature Minor Doctrine may NOT be used relative to Treatment of a Minor for Gender Identity Related Issues. The common law “**Mature Minor Doctrine does not apply to this law and is not a defense for the healthcare provider**” (TMA, 2024a).

TCA 68-33-103 (State of Tennessee, 2024k)

Only applies to medical procedures!

- (c)(1) It is not a defense to any legal liability incurred as the result of a violation of this section that the minor, or a parent of the minor, consented to the conduct that constituted the violation.
- (2) This section **supersedes any common law rule** regarding a minor's ability to consent to a **medical procedure** [emphasis added] that is performed or administered for the purpose of:
- (A) Enabling the minor to identify with, or live as, a purported identity inconsistent with the minor's sex; or
 - (B) Treating purported discomfort or distress from a discordance between the minor's sex and asserted identity.

Tennessee Law regarding Minors

Exceptions to the Need for Parental Consent

Case law exceptions -- Special cases -- Exceptions to case law exceptions

Key definition

TCA Section 68-33-102 - Chapter definitions (State of Tennessee, 2024n)

Medical Procedure

(5) "Medical procedure" means:

- (A)** Surgically removing, modifying, altering, or entering into tissues, cavities, or organs of a human being; or
- (B)** Prescribing, administering, or dispensing any puberty blocker or hormone to a human being;

Important: Psychotherapy or counseling do not fall under the definition of *medical procedure*.

Tennessee Law Regarding Minors

Summary

1. Mental health professional should work from the premise that parental consent is required when providing services to minors.
2. There are, however, three types of exceptions to the general requirement of parental consent:
 - a. **Statutory exceptions** – Examples include: (1) mental health professional relies in good faith on an individual's representations that they are the parent of a minor. (2) Emancipated minors – The minor is legally viewed as an adult and has the rights and responsibilities of an adult.
 - b. **Case law exceptions** (e.g., Mature Minor Doctrine/Rule of Sevens). However, case law exceptions may NOT be used in situations involving vaccinations or *medical procedures* for the treatment of “gender identity related issues” (TMA, 2024a). *Medical procedures* by definition do not include psychotherapy or counseling.
 - c. **Court orders** – Orders by a Tennessee court that has jurisdiction over the matter.

Suggestions are not intended to be legal advice. Consult an attorney with expertise in these legal areas as appropriate.

Suggestions

1. Establish a policy. Establish a policy for your practice or organization regarding accepting minors as clients without parental consent. Examples of potential policies include:

Policy example #1: Statutory exceptions only

Such a policy would permit the practice or organization to take on a minor as a client only in circumstances involving a clear statutory exception to the default requirement for parental consent.

Policy example #2: Case law exceptions may be considered

In addition to statutory exceptions, case law exceptions may also be considered. Such a policy might allow the practice or organization to consider the possibility of an exception based upon the Mature Minor Doctrine using the Rule of Sevens for guidance. Further, the policy could potentially be written to apply only situations in which the minor is of a minimum specified age (e.g., 17 years old, 16 years old, etc.).

Tennessee Law Regarding Minors

Suggestions (cont'd)

2. Post the policy on the practice or organization's website.
3. Establish a procedure for assessment of situations involving a minor with no parental consent, as well as the procedure for approval of the minor to become a client.
4. Train all staff and interns on both policies and the procedures.

Suggestions are not intended to be legal advice. Consult an attorney with expertise in these legal areas as appropriate.

Access to Minors' Healthcare Records

Access to Minors' Healthcare Records

Overview

1. Emphasis on parental rights to access their child's healthcare records
2. There are several exceptions to the parental right to the child's records (e.g., the parent is being investigated for child abuse). These can be complex.
3. There are special rules regarding access to minors' prescription records. Consultation may be appropriate.
4. Suicidal ideation must be reported to a minor's parents/guardians.

Access to Minors' Healthcare Records

Parents are personal representatives of a child who is a minor

A parent (or guardian) of a minor is generally recognized as the *personal representative* (a HIPAA term) of the minor unless the minor has been emancipated. As the personal representative of the minor, the parent typically has the legal authority to provide consent. The parent may also access the minor's protected health information (PHI) and discuss the minor's healthcare with the provider.

However, there are several situations in which access to the minor's records becomes more complicated. For example, if the parents are divorced and have joint/equal custody as indicated in the parenting agreement then both parents possess equal rights of consent and access to the minor's records. In some cases, only one parent has the authority to provide consent. However, in this situation the second parent typically retains the right to access the minor's records.

Access to Minors' Healthcare Records

State laws vary



Caution!

This statement from American Psychological Association Services (2005) provides a sense of how state laws regarding access to a minor's healthcare records can vary.

“State laws on minors' privacy rights vary considerably. In some states, for example, a child of a certain age, typically in his or her early teens, has a right to object to his or her parent's request to access the minor's record. In other states, the parents are allowed to access the child's mental health records, but there may be limitations – for example, if a court denies access, or the psychologist determines that granting access is detrimental to the minor's psychological well being.”

Suggestion: Check to see if the parents have lived in a different state. They may assume that laws in your state are the same.



Access to a minor's health records is determined by both federal and state laws

HIPAA defers to state laws (in most cases)

"The Privacy Rule defers to State or other applicable laws that expressly address the ability of the parent to obtain health information about the minor child. In doing so, the Privacy Rule permits a covered entity to disclose to a parent, or provide the parent with access to, a minor child's protected health information when and to the extent it is permitted or required by State or other laws (including relevant case law). Likewise, the Privacy Rule prohibits a covered entity from disclosing a minor child's protected health information to a parent, or providing a parent with access to such information, when and to the extent it is prohibited under State or other laws (including relevant case law)."

(HHS, 2021, October) <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/personal-representatives/index.htm>)

The Tennessee Families' Rights and Responsibilities Act (FRRA)

An emphasis on parental rights

The Tennessee Families' Rights and Responsibilities Act of 2024 found in Tenn. Code § 36-8-103 (State of Tennessee, 2024f) provides parents with the right . . .

“to access and review all health and medical records of the child”

For the mental health professional, the above is the default starting point when considering who has access to a minor's records. The next step is to determine what, if any, exceptions may exist in the situation.

Red = TCA language

Access to Minors' Healthcare Records

A Complex Issue

The Tennessee Medical Association's (2024a) Guide to the Treatment of Minors in Tennessee reviews the Tennessee Families' Rights and Responsibilities Act of 2024 (FRRA) and provides observations and opinions.

The Guide states that determining who can access a minor patient's medical record “can be a complex issue, especially in cases where the minor's parents are divorced or someone else has legal custody of the minor patient.” The Guide focuses primarily on “circumstances when the minor's parents or legal guardian cannot access a minor's medical record” (TMA, 2024a).

Exceptions to Parental Access of the Minor's Medical Record

According to the Tennessee Medical Association (2024a) the following are exceptions to parental access of a minor's healthcare records:

1. Parental or legal guardian consent [for others] to access a minor's medical record is not required when state law or other law does not require their consent for the minor to receive the treatment.
2. **If the minor can consent to treatment, the parent or guardian is not the personal representative and cannot have access to the minor's medical record. In these instances, the minor must provide consent before the parent or guardian can access the medical record.** See section II. Subsection I. above.
3. When a court authorizes someone other than the parent to make treatment decisions for the minor, then the parent is not the personal representative of the minor and has no right to access the minor's medical record.
4. When the parent agrees to the confidential relationship between a physician and the minor.

Author's note: The exceptions listed above are found in TMA (2024a) but no TCA citation was provided there.*

*Information is based on TMA (2024a) opinion and should be considered with appropriate caution.

Legal consultation is recommended before taking action based on this information.

Access to Minors' Healthcare Records

Exceptions to Parental Access of the Minor's Medical Record

Prescription records access allowed

“In spite of the law allowing the minor to consent that is summarized in 1. directly above and to extent allowed by federal law a minor's parent, legal guardian, or legal custodian may access any **prescription records** resulting from treatment provided to an unemancipated minor pursuant to this law” (TMA, 2024a).

Exception in cases of suspected abuse of the minor

“If the treating professional is required to report abuse of the minor under Tennessee law and believes that access to the records is reasonably likely to endanger the life or physical safety of the minor then the access does not have to be provided” (TMA, 2024a).

Access to Minors' Healthcare Records

Exceptions to Parental Access of the Minor's Medical Record

Parental access to inpatient prescription records

See TCA 33-8-202 (State of Tennessee, 2024h)

“2. If a minor consents to treatment in a hospital, even if a law allows the minor to consent, the minor's parent, legal guardian, legal custodian, or other person with medical decision-making authority for the unemancipated minor may access, and a healthcare provider or healthcare facility shall provide access to, any **prescription records** resulting from medical treatment of the minor” [emphasis added] (TMA, 2024a).

“Exception in cases of suspected abuse of the minor

a. If the treating professional is required to report abuse of the minor under Tennessee law and believes that access to the records is reasonably likely to endanger the life or physical safety of the minor then the access [to the prescription records] does not have to be provided” (TMA, 2024a).

Access to Minors' Healthcare Records

Summary

1. The Tennessee Families' Rights and Responsibilities Act of 2024 (State of Tennessee, 2024g) provides parents with the general right to access and review all health and medical records of the child.
2. Non-custodial parents typically retain the right to receive a copy of their child's records.
3. There are several types of exceptions to parental access to a minor child's health records which are rather complex and can be confusing. As a result, consultation is usually a good idea before making any significant decisions.
4. A request from a parent for a copy of a child's records can be refused if there is suspicion of child abuse.
5. A new Tennessee Act limits some existing licensing rules and statutes pertaining to providing of summaries of health care records rather than complete copies (TMA, 2024a).

Part 4

Release of Healthcare Records

Release of Healthcare Records

Overview

There are three major changes related to the release of healthcare records. Healthcare providers must now:

1. Release client/patient records within 10 working days to the client/patient or their authorized representative (e.g., a parent or guardian).
2. Release client/patient records within 10 working days to a client/patient's attorney.
3. If a request for records is made by the client/patient, their authorized representative, or their attorney a healthcare provider may provide a summary of the records. However, if a complete copy of the records is requested then a complete copy must be provided.

Release of Healthcare Records

Releasing records to **clients/patients**

TCA 63-1-101 (State of Tennessee, 2024m)

SECTION 2. Tennessee Code Annotated, Section 63-2-101(a) [Re: Professions of the Healing Arts], is amended by deleting subdivision (1) and substituting:

(1) Notwithstanding another law to the contrary*, a health care provider shall provide to a patient or a patient's authorized representative [e.g., parent or guardian] a copy of such patient's medical records within ten (10) working days of receipt of a written request by the patient or the patient's authorized representative. The health care provider may provide a summary of such patient's medical records, at the option of the health care provider, but the provision of a summary does not satisfy the patient's or representative's right to receive, or serve as a substitute for, a full medical record under this subdivision **(a)(1)** [emphasis added] (State of Tennessee, 2024m) (cont'd next slide) ...

As a result, health care providers may still provide a summary of a client's record at the client's request, but the client/patient still has the right to a complete copy. Therefore, if pressed to do so, mental health providers must now provide a complete copy of the record.

*This appears to override existing licensing rules which allow some providers to provide either a complete copy **or summary** at their discretion.

Red = NEW TCA language

Releasing records to clients/patients' attorneys

“AN ACT to amend Tennessee Code Annotated, Title 34; Title 63 and Title 68, relative to medical Records” was signed into law and became effective July 1, 2024.

SECTION 1. Tennessee Code Annotated, Section 34-6-206 [Power of Attorney – Access to medical records and information], is amended by designating the existing language as subsection (a) and adding the following as subsection (b):

(b) Notwithstanding another law to the contrary*, a health care provider **shall provide to the attorney in fact a copy of the principal's medical records within ten (10) working days of receipt of a written request by the attorney in fact or principal. The health care provider may provide a summary of the principal's medical records, at the option of the health care provider, but the provision of a summary does not satisfy the attorney in fact's or principal's right to receive, or serve as a substitute for, a full medical record under this subsection (b) [emphasis added]** (State of Tennessee, 2024).

As a result, health care providers may still provide a summary of a client's record to the attorney but the client/patient still has the right for a complete copy to be sent to their attorney.

*This new statute appears to amend existing licensing rules allowing the provider to provide a summary at their discretion.

Red = TCA language

Release of Healthcare Records

Releasing complete records

Implications and considerations for mental health professionals

- Under the new law mental health providers may be compelled to provide a complete copy of the medical records rather than a summary.
- As a result, both parents (including non-custodial parents) and ultimately the minor client will be able to view the complete record. Be sure that all parties understand this – Document!
- Clinician's should give careful consideration about what information is documented (e.g.) specific statements made by the minor client or a parent.
- Think ahead about potential for harm to the minor once they become an adult and can access their full record, including potentially hurtful or damaging statements from their parents.
- Consider using *psychotherapy notes* to document (e.g.) particularly sensitive or potentially harmful information. Psychotherapy notes (as permitted under HIPAA) are the mental health professional's own notes which are not part of the clinical records and are not usually accessible by clients or their personal representatives (HHS, 2021b)

Part 5

Vignettes

Duty to predict, warn, and take steps to protect

A Concerning Situation

Spencer is an LPC/MHSP working at a community mental health center. Several weeks ago, he began working with an adult client, Nate, whose presenting problems included depression and episodes of rage. Nate reported a history of being charged with assault on two occasions. A month ago, Nate's employer placed him on a corrective action plan. Since that time Nate reports that he has met every requirement. However, in today's session Nate tells Spencer that despite his compliance his position was suddenly eliminated. Rather than seeming to be upset, Spencer notes that Nate is uncharacteristically quiet and unanimated. Nate reports that he only feels numb. However, he says in a rather detached voice that he was "not going to take it," "that they were going to regret it," and "it is going to be their fault." He ends the session early and stating that he does not need to reschedule.

Does this constitute a duty-to-warn situation?

What does Spencer need to do?

Access to Minors' Healthcare Records

Kendra's Records

Nicole, LPC/MHSP (Temp.), is an employee at a large non-profit counseling organization where she is supervised by Dr. Black, LPC/MHSP. Kendra was one of Nicole's clients during the previous year. She was 16 at that time. Nicole had treated Kendra for anxiety related to family issues and school related stressors. Today, Nicole received an email from Nicole's father seeking a copy of his daughter's records. Nicole reviews Kendra's records and finds a copy of the court-decreed parenting agreement indicating that the mother, Charlotte, had sole authority to provide consent for Kendra's non-emergent healthcare treatment. Nicole comes to Dr. Black to consult about the situation before taking any further

What ethical and legal issues are involved in this situation?

What are the possible courses of action for Nicole and Dr. Black?

Teens and Consent

Melinda's Dilemma

Tricia and William are in the process of getting a divorce. They have two children, Jeremy (17) and Julia (13). Tricia wants to get counseling for her two children because she believes the divorce process is seriously affecting them. She contacts Melinda, a local LPC/MHSP, to start the process regarding Julia and talks with Jeremy that night. The next day Jeremy calls Melinda and tells her that he really wants to get into therapy but is worried about what his father's reaction might be and that he is not sure if his father would approve. Melinda consults with her friend and colleague, Cora.

If Melinda came to you for consultation what would you say?

Can Melinda take Jeremy on as a client?

What other issues are there?

Releasing Client Records

The Demanding Client

Roger is an LMFT in private practice in Tennessee. Roger has a thorough process in place for fully informing clients during the intake process. He has been working with a client, Carly, for several weeks. Carly has a history of boundary problems, periods of anger, and relationship issues. During their first few sessions Roger has observed that therapy was going rather well. However, after their fifth session Carly emails Roger saying that she has “been doing some reading online” and now believes that counseling is a “racket” that does not really help anyone. Later that day, Carly shows up at Roger’s office insisting that he provide her with a copy of her records immediately.

How should Roger respond? Does he have any options?

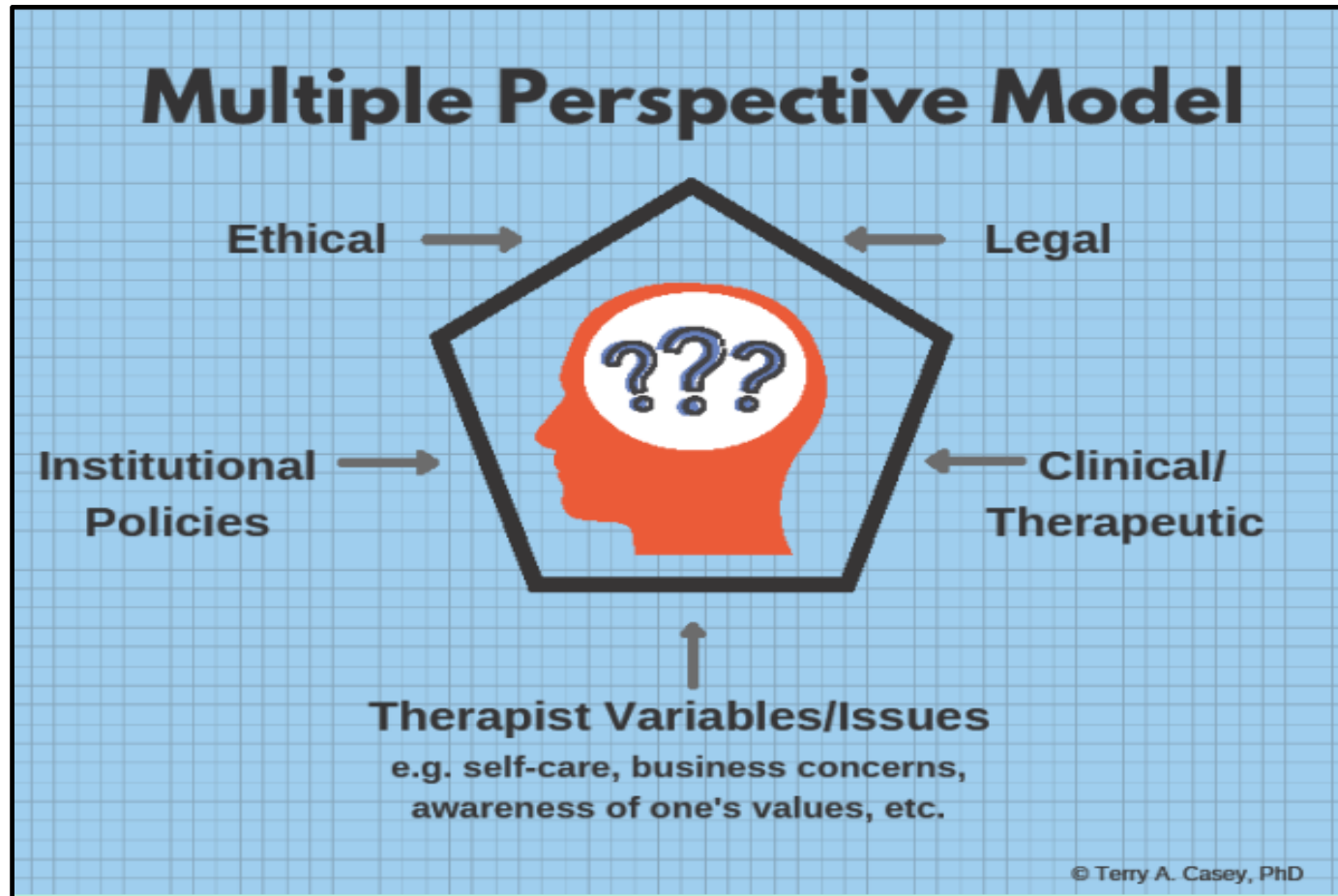
What are the client’s rights?

Supplement

The Multiple Perspective Model[©] for Decision Making

The Multiple Perspective Model®:

A practical guide for decision-making



The Multiple Perspective Model[©]: A practical guide for decision-making

Step #1 Identify potential problems/issues which correspond to one or more of the Model's perspectives.

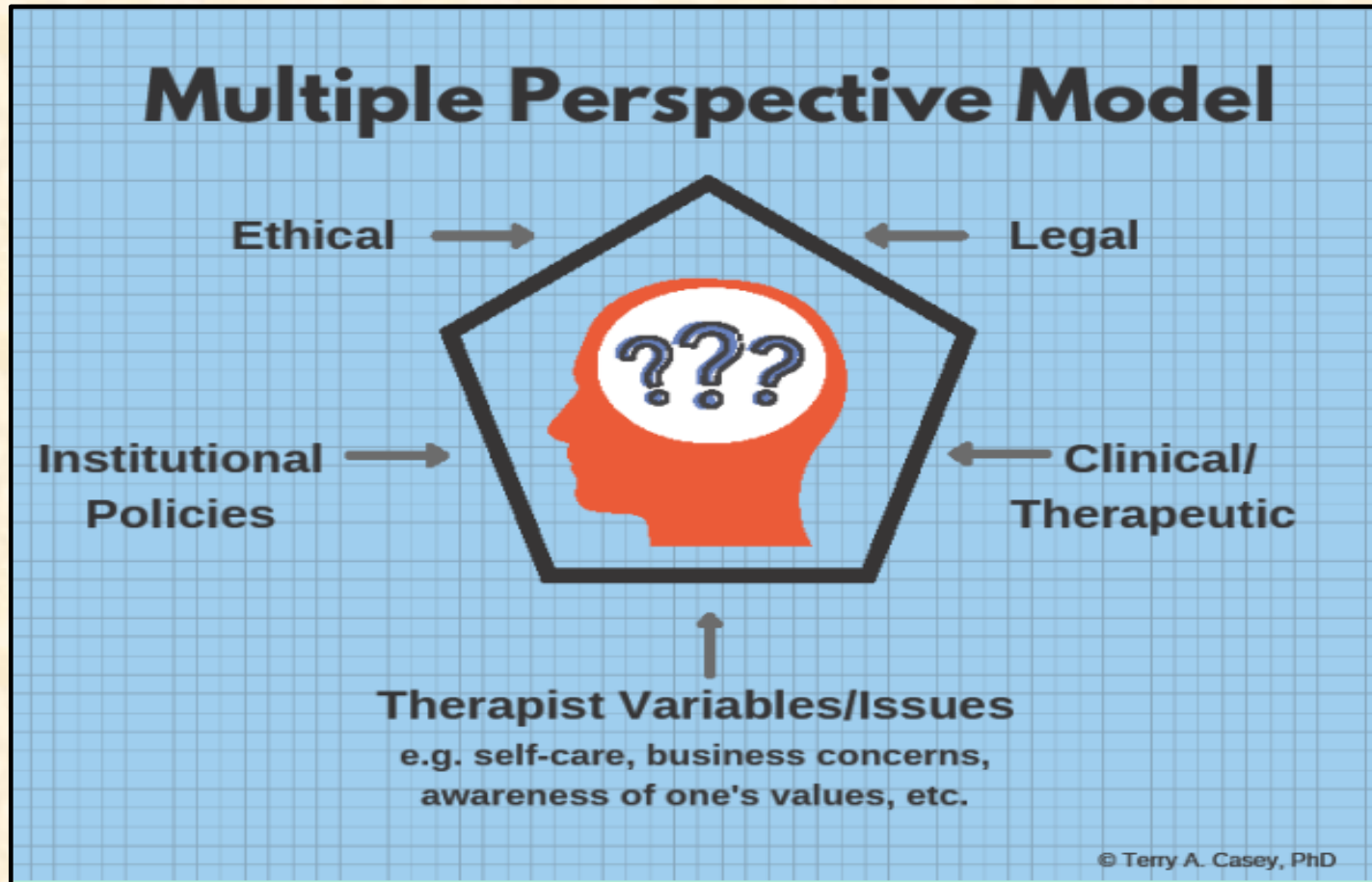
Ethical: Which code(s) of ethics or code of conduct applies?

Legal: Includes federal and state laws/statutes, licensing rules, civil suits and complaints filed with the licensing board.

Clinical / therapeutic: Includes (e.g.) diagnosis, therapeutic relationship, Tx plan, therapy techniques, etc.

Institutional policies: Includes employer's policies as well as policies of the work site/venue.

Therapist Variables & Issues: Includes (e.g.) clinician's well-being, self-care & interests, awareness of one's values & financial interests.)





Step #2.A Ethical principles. Does the problem have a significant ethical component? If so, identify the applicable code of ethics and review its ethical principles from its preamble/introduction (e.g., box right).

The ethical perspective involves applying all applicable formalized codes of ethics of the involved counseling and behavioral health professionals. See Keith-Spiegel (2014) for a discussion and samples of ethics complaints and Barnett, Zimmerman, & Walfish (2014) for a practical ethics guide for those in private practice.

Ethical principles -- Review the appropriate code of ethics (C.O.E.) to determine the **ethical principles** upon which the code's actual standards are based.

For example, the ACA's Code of Ethics (2014) lists six ethical principles which serve as "the foundation for ethical behavior and decision-making."

- *autonomy* – fostering the right for the client to control the direction of his/her life
- *non-maleficence* -- avoidance of doing harm
- *beneficence* – working for the good of the client and society, at large
- *justice* – treating clients equitably; fostering fairness and equality
- *fidelity* – honoring commitments; fulfilling one's responsibilities of trust . . . [re: everyone with whom the counselor has professional contact]
- *veracity* – dealing truthfully with clients and others



Step #2.B Ethical standards

Standards -- Locate and review all the relevant **ethical standards** (i.e., book, chapter & verse such as “*Section B.3.e*”).

**Example of standards from a code of ethics (ACA, 2014)
(See box at right)**

Note: Do not stop your search after you find one applicable standard. There may be additional relevant standards, clarifications or exceptions elsewhere in the code.

C.3.c. Statements by Others

When feasible, counselors make reasonable efforts to ensure that statements made by others about them or about the counseling profession are accurate.

C.3.d. Recruiting Through Employment

Counselors do not use their places of employment or institutional affiliation to recruit clients, supervisors, or consultees for their private practices.

C.3.e. Products and Training Advertisements

Counselors who develop products related to their profession or conduct workshops or training events ensure that the advertisements concerning these products or events are accurate and disclose adequate information for consumers to make informed choices.

(ACA, 2014)



Step #3 Legal areas

Does the problem involve one or more significant legal areas? If so, which of the following legal areas are involved?

Legal areas

- Federal privacy laws -- HIPAA, FERPA, 42 CFR Pt.2
- State laws (statutes)
- State licensing rules/regulations
- State executive orders
- Other (Including civil suits & complaints filed with licensing boards.)

Step #4 – Consultation



- Consult with your close associates and colleagues. Document the consultations!
- Consult with other counseling/mental health professionals who will be more likely to provide objective opinions (e.g., state professional association, national professional association, etc.). Document!
- If other issues are present that fall outside your scope of practice and/or your competencies (or those of the individuals you have consulted above), consult with attorney with expertise in mental health issues or other professionals as appropriate. Document!

Recommendation: Be sure that those with whom you consult understand that you may want to document the source and content of the consultation.

Step #5 Documentation – Show your work

Make a decision regarding a course of action based upon the best available information and use of the Model. Document! (see below)

- A. Provide basic information: **Who? What? When? Where?** etc.
- B. Show your work. Document your process and sources of information used for making the decision. State: “**Based upon the following:**”
 1. Application of the Multiple Perspective Model (or other established model that you can cite or reference)
 2. Cite/quote relevant definitions and/or section(s) from the applicable federal and state laws
 3. Cite/quote relevant section(s) from the applicable licensing rules
 4. Cite/quote relevant ethical principles and standards from the applicable code of ethics.

Step #5 (cont'd)

B. Show your work (cont'd)

5. Document your consultations with the following:

- Colleagues whom you know well (i.e., your regular go-to's)
- Mental health professionals who have relevant expertise and will more likely be objective (i.e., not friends or co-workers)
- Other professionals (e.g., attorneys, MDs, CPAs, etc.)

Step #6 Final self-check & Decision

- A. Self-check. Review your decision in terms of:
- **Standard of care**. Honestly consider whether your decision is likely to be viewed as consistent with the standard of care?
 - **Best practices**. If applicable, cite guidelines for best practice from authoritative sources that guided your decisions and actions.
- B. Describe the decision you have made. Be concise. Do not include information that is not relevant to your decision.
- C. Sign and date

References

(may be in a separate document)