New Ethical Dilemmas in the Digital Age

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Legal Issues

Practitioners should contact both their professional and personal liability insurance representatives to determine if professional and personal liability insurance policies cover ethical violations related to SNS.

(Gabbard et al., 2011)
Presentation Outline

1. Presence of Technology
2. Digital Types
3. Ethical Models
4. Application of Ethical Models
5. Planning Next Steps
Use of technology by counselors

- is increasing
- presents unique ethical dilemmas

(NBCC Policy, 2013)
1994: “Today”: What is the Internet, anyway?
Technology has invaded our lives ...
Text messaging: 97%
Voice/video calls: 92%
Internet: 89%
Email: 88%
Social networking: 75%
Take pictures/video: 60%
News: 55%
Watching video: 50%
Games: 47%
Maps: 41%
Music or podcasts: 41%

(Pew Research, 2015)
92% of American adults have cell phones

68% have smart phones

(Pew Report, 2015)
90% of people over age 6 will own SMARTPHONES by 2020

(Techcrunch.com, 2015)
80% of physicians routinely use mobile health technologies to provide patient care.

96% of surveyed mobile health users and medical professionals said mobile health apps “improve their quality of life.”

(Research Now, 2015)
... and its *Creeping* into clinical practice  
(Mishna et al., 2012)
Practitioners are vulnerable to being *blindsided* by NEW ethical dilemmas

(Crowley & Gottlieb, 2012)
Some professionals are....

...ethically astute but struggle to keep up with the technology.

...comfortable with technology but less familiar with ethical codes.

(Lannin & Scott, 2013)
‘Adapting to the new culture wisely will necessarily involve both understanding the ethical principles themselves as well as developing competence in the technology of the burgeoning digital culture.’

(Lannin & Scott, 2013)
DIGITAL TYPES
Digital Immigrants
... people born before or about 1964 and who grew up in a pre-computer world
Like all immigrants... as Digital Immigrants learn to adapt to their environment, they retain, to some degree, their ‘accent’ ...

What is your digital accent?

(Prensky, 2001)
‘native speakers’ of the digital language of computers, cell phones, video games, and the Internet

(Zur, 2012; Prensky, 2001)
Comparison of Digital Types

**Digital Immigrants**
- Prefer to talk in-person or on the phone
- Don’t text or only sparingly
- Prefer synchronous communication
- Prefer receiving information slowly: linearly, logically, & sequentially
- Prefer reading text (i.e., books) on processing pictures, sounds & video

**Digital Natives**
- Prefer to talk via chat, text, or messaging thru social media
- Text more than call
- Prefer asynchronous communication
- Prefer receiving information quickly & simultaneously from multiple multimedia & other sources
- Prefer processing /interacting with pictures, graphics, sounds & video before text

(Zur & Zur, 2011; Rosen, 2010; Prensky, 2001)
75% of SUD treatment workforce is over the age of 40

(Knudsen et al., 2003)
Almost 70% of individuals who received SUD services were under the age of 40

(TEDs Data; SAMHSA, 2011)
“All I’m saying is now is the time to develop the technology to deflect an asteroid.”
Health care professionals must be knowledgeable about and open to this new digital culture

(Lannin & Scott, 2013)
Use of Technology and Social Media
FACEBOOK

You're doing it wrong.
87% of Americans use the Internet

(Fox & Rainie-Pew Report, 2014)
What do we know about clients?  
Survey of 8 urban drug treatment clinics in Baltimore (266 patients)

Clients’ had access to:
- Mobile Phone 91%
- Text Messaging 79%
- Internet/Email/Computer 39 - 45%

(McClure et al., 2013)
Social Network Sites are a specific type of social media that allow individuals to:

• construct a public or semipublic profile within a bounded system
• articulate a list of other users with whom they share a connection
• view and traverse their list of connections and those made by others within the system

(Boyd & Ellison, 2007)
Social Media Users Among All Adults Ages 18+

Percent of All American Adults Who Use the Following Social Media Websites

- **FaceBook**: 58%
- **LinkedIn**: 23%
- **Pinterest**: 22%
- **Instagram**: 21%
- **Twitter**: 19%

Pew Research Center’s Internet Project September Combined Omnibus Survey Sept. 11-14 & Sept. 18-21, 2014; N=2,003 adults in the US ages 18+

twitter - i’m eating a #donut
facebook - i like donuts
foursquare - this is where i eat donuts
instagram - here is a photo of my donut
youtube - here i am eating a donut
linkedin - my skills include donut eating
pinterest - here’s a donut recipe
spotify - now listening to “donuts”
g+ - i’m a google employee who eats donuts
So I looked at your Facebook page... oh man... there's no way you're getting this job!
Companies need to be careful when using social media in recruiting employees and researching applicants.

Protected Class (race, religion, & disability)

‘What is learned cannot be unlearned’

(Kasarjian, 2013)
DON’T EVER
‘SHOULDER SURF’
or
MAKE AN
EMPLOYEE SHARE
THEIR PASSWORD
or
ASK THEM TO
‘FRIEND’ YOU

(Klemchuk & Desai, 2014)
When employees are reprimanded or terminated for statements they make online ...
“Facebook Fired”
... the growing number and type of incidents that have arisen across all professions

(Hidy & McDonald, 2013)
Ethical Codes and Licensing Boards have not caught up with the TECHNOLOGY but are starting to provide some guidance.
Other boards may use existing laws and investigate complaints on the grounds of:

- Unprofessional conduct
- Unethical conduct
- Moral turpitude
- Mismanagement of patient records
- Revealing a privileged communication
- Breach of confidentiality

(Cronquist & Spector, 2011; Spector & Kappel, 2012)
An ethical dilemma occurs when a choice must be made between two courses of action, where there are significant consequences for either course of action taken, and the Code does not provide sufficient guidance to determine the course of action that should be taken (Rubin, Millard, Wilson, & Wong, 1991).
Ethics codes cannot do our questioning, thinking, feeling, and responding for us. Such codes can never be a substitute for the active process by which the individual therapist or counselor struggles with the sometimes bewildering, always unique constellation of questions, responsibilities, contexts, and competing demands of helping another person. Ethics must be practical. Clinicians confront an almost unimaginable diversity of situations, each with its own shifting questions, demands, and responsibilities. Every clinician is unique in important ways. Every client is unique in important ways. Ethics that are out of touch with the practical realities of clinical work, with the diversity and constantly changing nature of the therapeutic venture, are useless.

(Pope & Vasquez, 1998, xiii–xiv)
Values & Ethics

Some ethical decisions are clear...

• Don’t sleep with clients
• Don’t sleep with supervisees
• Don’t supervise family members
• Don’t hire by nepotism
• Don’t go into business with clients
• Don’t involve clients in other business ventures
• Don’t emotionally or physically abuse clients... etc.
Values & Ethics

Some ethical decisions aren’t so clear...

• Duty to report scenarios vs. confidentiality
• Involuntary commitment vs. client rights
• Pregnancy termination vs. right to life
• Confidentiality vs. Law enforcement
• 42CFR and HIPAA
• Others?
Values & Ethics

Ethics dilemmas occur when worker must chose between 2 or more conflicting ethical directives

(we WILL encounter these)
Behavioral Health Domains where some dilemmas lurk:

1. Professional Boundaries
2. Informed Consent
3. Confidentiality and Privacy
4. Decision making in context of scarce resources
Let’s Kahoot this together!!!

https://play.kahoot.it/#/k/8122694c-586e-45c8-a297-1feb3426b683
Strategies from the Case Scenarios
Questions
Ethical Reasoning - Model #1

1. recognize that there is an event to which to react
2. define the event as having an ethical dimension
3. decide that the ethical dimension is of sufficient significance to merit an ethics-guided response
4. take responsibility for generating an ethical solution to the problem

(Sternberg, 2012)
Ethical Reasoning - Model #1

5. figure out what abstract ethical rule(s) might apply to the problem

6. decide how these abstract ethical rules actually apply to the problem so as to suggest a concrete solution

7. prepare for possible repercussions of having acted in what one considers an ethical manner;

8. act

(Sternberg, 2012)
1. Identify the problem
2. Identify potential issues involved
3. Review relevant ethical guidelines
4. Obtain consultation
5. Consider possible and probable courses of action
6. Enumerate consequences of various decisions
7. Decide on best course of action

(Corey, Corey, and Callanan, 1988)
Ethical Reasoning - Model #3

1. Select between two courses of action.
2. State the factually based reasons for supporting each course of action.
3. State the ethical principles supporting each course of action.
4. State the factually based reasons for not supporting each course of action.
5. Indicate which ethical principles will be compromised for each course of action taken.
6. Justify your decision for choosing a particular course of action by including selective points from the above steps.

(Rubin et al., 1991)
The accessibility, anonymity, and universality of the Internet have made it easier and more tempting to "Google" clients.
Prevalence of Googling

- **22%** of **193** clinical psychology graduate students had Googled their psychotherapy clients (Martin, 2010)

- **28%** of **227** multidisciplinary psychotherapists accidentally found information about clients online whereas **48%** intentionally sought this information (Kolmes & Taube, 2010)
98% of doctoral psychology students had searched for at least one client’s information over the past year... even though most reported that searching for clients online was “always” or “usually” unacceptable

(DiLillo & Gale, 2011)
Would it be okay for a counselor to drive by a clients’ house?
Employees will share their gripes and struggles on Twitter, Facebook, YouTube, Instagram, and any other site with friends or strangers who will listen...

(Kasarjian, 2013)
National Labor Relations Act

• Employers should still exercise considerable caution when responding to complaints about an employee’s use of social media

• An employee’s comments on social media are generally not protected if they are mere gripes not made in relation to group activity among employees

• Postings that are otherwise protected by the NLRA are unlikely to lose that protection merely because they are offensive, even if they use profanity

(Morrison & Foerster, 2014)
The key that NLRB or judges try to determine is if an employee is griping (complaining) for their own self interest or on behalf of co-workers.

Protected concerted activity includes discussions and these do not have to be formalized events.

(Zywave Inc., 2012)
When employees are reprimanded or terminated for statements they make online, the unwary employer may find that it has inadvertently entered an area that is a hotbed for scrutiny and litigation.

(Kasarjian, 2013)
‘Ethical behavior does not arise solely from habit or obedience to patterns or rules but includes intelligently guiding our actions in harmony with the texture of the situation’

(Luce-Kapler, Sumara, & Iftody, 2010, p. 540)
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THANK YOU