Client’s Rights and Counselor Responsibilities

Chapter 5
Psychology 475
Professional Ethics in Addictions Counseling
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Client’s Right to Give Informed Consent

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Informed Consent

• Right of client to be informed about their treatment
• Make autonomous decisions about it
• Increase chances that the client will become involved and willing participants in treatment

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Counselor’s are required to disclose to client’s:

• Risks
• Benefits
• Alternatives to proposed treatment

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Legal Aspects of Informed Consent

• Three elements are basic to the legal definition:
  • Capacity
  • Comprehension of information:
  • Voluntariness

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Informed Consent in Practice

• Informed consent can be provided in several ways.
  • Consent Form
  • Documented discussion
Informed Consent Forms must include:

- a. date of discussion regarding consent
- b. client and practitioner names
- c. statement of the client's right to withdraw from treatment

Informed Consent Forms continued

- d. benefits and risks associated with treatment
- e. a description of treatment services
- f. issues of confidentiality and their limits
- g. signature of the client

Content of Informed Consent

- Therapeutic Process
- Background of the Counselor
- Costs Involved in Therapy
- Length of Therapy and Termination

Content of Informed Consent continued

- Consultation with Colleagues
- Client's Right of Access to Their Files
- Rights Pertaining to Diagnostic Labeling
- Nature and Purpose of Confidentiality

Content of Informed Consent continued

- Benefits and Risks of Treatment
- Alternatives to Traditional Therapy
- Tape-recording or Videotaping Sessions

Counselors Responsibility in Record Keeping

- Maintaining Client Notes has a dual purpose:
  - 1. Provide the best service possible for clients
  - 2. Provide a basis for safeguarding the counselors in the event of a lawsuit.
Record Keeping continued

- Critical to document your actions in crisis situations

Main objectives to documentation practices are:

- a. to structure quality care
- b. to decrease liability exposure
- c. to fulfill requirements for reimbursement

Remember

- "If it is not documented, it did not happen."

Some counselors do not want to keep notes because:

- Concerned about violating confidentiality
- Don’t want to assume a legalistic stance in their counseling practice
- Not enough time to keep notes

At a minimum, records should contain:

- Client-identifying information
- Client’s primary care physician
- Most recent physical examination results

More things records should contain:

- Intake sheet
- Documentation of a mental health assessment
- Signed Informed Consent Form
- Diagnosis and prognosis
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More things records should contain:

- Treatment plans
- Statements regarding the client’s main issues
- Previous and present data from psychological tests

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More things records should contain:

- Documentation of referrals to other providers
- Signed and dated progress notes
- Types of services provided

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More things records should contain:

- Precise times and dates of appointments
- Discharge summary
- Release of information

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Note

- Case notes should NEVER be altered after they have been entered into a client’s records.

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Record storage and shelf life

- Must keep records in a secure area.
- Must keep records for a minimum of seven years after client has been terminated.

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Counseling Children and Adolescents
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The Right to Treatment

- General Rule:
  - Parent is entitled to general information from the counselor about the child’s progress in counseling.

The Right to Treatment continued

- For a minor to enter into a counseling relationship, it is necessary to have informed parental or guardian consent or for counseling to be court ordered.

Exceptions:

- Minor is seeking counseling for drugs
- For STDs
- For pregnancy and birth control
- For an examination following alleged sexual assault to a minor over the age of 12

Informed Consent of Minors

Specialized Training for Counseling Children and Adolescents

- It is unethical to practice in areas which one has not been trained.

Involuntary Commitment and Human Rights

- Be familiar with State Laws
- Use the least restrictive alternative first
Involuntary civil commitment is based on the following criteria:

- Mental illness
- Dangerousness to self or others
- Disability
- Refusal to consent

More criteria

- Treatability
- Incapacity to decide on treatment
- Compliance with the "least restrictive" criterion

Malpractice Liability in the Helping Professions

- Malpractice: the failure to render professional services or to exercise the degree of skill that is ordinarily expected of other professionals in a similar situation.

Malpractice situations continued

- 1. Procedure used by the counselor was not within the realm of accepted professional practice
- 2. Counselor used a technique that he or she was not trained in

- 3. Counselor did not use a procedure that would have been helpful
- 4. Counselor failed to warn others about and protect them from a violent client

Malpractice situations continued

- 5. No informed consent documented
- 6. Counselor did not explain the possible consequences of the treatment
For a malpractice claim, these four elements must be present:

1. A professional relationship between the counselor and client must have existed.
2. The counselor must have acted in a negligent or improper manner, or deviated from the standard of care.
3. The client must have suffered harm or injury.
4. There must be a legally demonstrated causal relationship between the counselor’s negligence and the damage or injury claimed by the client.

Two most common malpractice suits:

- Breach of confidentiality
- Sexual misconduct

Three common problem areas that pose the greatest risk for malpractice lawsuits:

- Violations of client’s personal rights
- Failure to protect others from client
- Incompetent treatment of clients

Client Abandonment
Sexual Abuse of a Client

- It is NEVER appropriate for counselors to engage in sexual contact with clients or to become sexually and intimately involved with clients.

- Initial consent of a client will not be a defense against malpractice actions.
Risk Management

- Risk management: the practice of focusing on the identification, evaluation, and treatment of problems that may injure clients, lead to filing of an ethics complaint, or lead to a malpractice action.

Risk Management is a 4 Step Process:

1. Identify potential risk areas
2. Evaluate whether the risk area is serious enough to merit further attention

Risk Management Process continued

3. Employ risk control strategies
4. Review treatment periodically to ascertain their effectiveness.

Course of Action in Malpractice Suits

- Treat the lawsuit seriously
- Do not attempt to resolve the matter with the client directly
- Become familiar with your liability policy

Course of Action in Malpractice Suits continued

- If a client threatens to sue you or you receive a subpoena, contact your insurance company and attorney immediately
- Never destroy or alter files
- Promptly retain an attorney.
- Prepare summaries of any pertinent events about the case that you can use.
- Do not discuss the case with anyone other than your attorney.
Course of Action in Malpractice Suits continued

- Determine the nature of support from any professional association you belong too.
- Do not continue a professional relationship with the client.