



# Conflicting Values- Ethical Referrals

# Definitions

- ▶ Bias: is a prejudice in favor of or against one thing, person, or group compared with another, usually in a way that is considered to be unfair
- ▶ Prejudice: refers to the inflexible and irrational attitudes and opinions held by members of one group about another. Prejudice can be both positive and negative.
- ▶ Discrimination: refers to the behaviors directed against another group. For example, the protection of opportunities for themselves by denying access to those whom they believe do not deserve the same treatment as everyone else

# 1. Which of the following guidelines are used when faced with incongruent values between therapists and clients?

- ▶ A. Don't be biased or prejudiced
- ▶ B. Everybody has biases and prejudices, so know what ours are and work on removing them
- ▶ C. Set aside our biases and prejudices and provide effective treatment to all our clients
- ▶ D. If we aren't able to be effective with certain clients, refer without doing harm
- ▶ E. A and B
- ▶ F. All the above

# Discriminatory practices

- ▶ **T.C.A. Section 4-21-102. Chapter definitions.**
- ▶ As used in this chapter, unless the context otherwise requires:
- ▶ **(4)** "Discriminatory practices" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, creed, color, religion, sex, age or national origin;

# Bruff v. North Mississippi Health Services, 244 F.3d 495 (5th Cir., 2001)

- ▶ The Court found that to require the Medical Center to accommodate her religious beliefs by allowing her 'to be excused from counseling on any topics that might conflict with her religious beliefs', while retaining her as an EAP provider would involve more than de minimis cost and therefore impose an undue hardship on the organization. Title VII provides that religious discrimination is allowed under circumstances of undue hardship, and transfer to another reasonably comparable position is offered but declined.

# Keeton v. Augusta State University (ASU), et. al. US Court Appeals, (11<sup>th</sup> Circuit, 12/16/11)

- ▶ After 1<sup>st</sup> year of master's work, Keeton was asked to participate in a remediation plan addressing as deficiencies in her “ ability to be multiculturally competent counselor...with regard to working with GLBTQ populations”
- ▶ Keeton claimed the remediation plan was based on her beliefs about homosexuality and denied her free speech and exercise
- ▶ Rather, the court found and supported the district court's finding that the remediation plan was imposed because she expressed an **intent to impose her religious beliefs on her clients**

# Walden v. Centers for Disease Control & Prevention, 669 F.3d 1277 (11th Circuit, 2/7/12)

Counter to the defendant's claim that religious discrimination was the 'substantial and motivating role' in their decision, the court found that Walden was removed as a provider from a EAP contract because of the way she handled the referral and their belief she would not alter her behavior in future referrals

# Ward v Polite, et. al. US Court Appeals, (6<sup>th</sup> Circuit, 1/27/12)

- ▶ Eastern Michigan University terminated a student from their counseling program after she refused to counsel a gay person and wished to refer that client to another provider. The court found that the disciplinary actions were “because of hostility toward her speech and faith, not due to a policy against referrals” and because of that ruled against the university.
- ▶ “What poses a problem is not the adoption of an anti-discrimination policy; it is the implementation of the policy, permitting secular exemptions but not religious ones and failing to apply the policy in an even-handed, much less a faith-neutral, manner to Ward.” The Court ruled for Ward, stating that the policy was not faith-neutral.

# ACA 2014 code of Ethics

## A.11.b. Values Within Termination and Referral

Counselors refrain from referring prospective and current clients based solely on the counselor's personally held values, attitudes, beliefs, and behaviors. Counselors respect the diversity of clients and seek training in areas in which they are at risk of imposing their values onto clients, especially when the counselor's values are inconsistent with the client's goals or are discriminatory in nature.

# PC#926 Values-based Referral Bill (2016)

## Key components of the law

- ▶ Mental health professionals in private **practice may not be required to provide counseling services** when there is a conflict b/
  - ▶ **“Goals, outcomes or behaviors”** of clients, and the
  - ▶ **“Sincerely held principles”** of counselors, as long as the counselor can
  - ▶ **Coordinate a referral to a willing counselor**, and the
  - ▶ Client is **not imminently dangerous to self or others**

# Masterpiece Cakeshop, Ltd., Et Al., Petitioners v. Colorado Civil Rights Commission, US Supreme Court, June 4, 2018 (584 U. S. \_\_\_\_ (2018)).

- ▶ ‘While it is unexceptional that Colorado law can protect gay persons in acquiring products and services on the same terms and conditions as are offered to other members of the public, the law must be applied in a manner that is neutral toward religion.’
- ▶ ‘The government, consistent with the Constitution’s guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.’

# Klein v. Oregon Bureau of Labor and Industries (BOLI) petition to Supreme Court (2018)

- ▶ The decision could resolve a broader question that the Supreme Court didn't settle in its *Masterpiece Cakeshop* decision involving a Colorado baker who refused to bake a cake for a same-sex wedding. The narrow decision, [issued in June](#), said the Colorado Civil Rights Commission violated baker Jack Phillips' free exercise rights because it showed hostility to his religious claims. SCOTUS blog explains the unresolved question: "**When can sincerely held religious beliefs like Phillips' trump neutral laws that apply to everyone?**"

# Guidelines for ethical implementation and practice of the new law

- **Don't discriminate** when making values-based referral
  - \_\_ T.C.A. Section 4-21-102 Discrimination defined
  - \_\_ Update self on federal laws v policies and ordinances
- **Identify and clarify our sincerely held principles** that may significantly conflict with our clients (SHPs checklist)
- **Anticipate and clarify potential treatment goals, objectives and behaviors** that will be difficult for you to facilitate

# Guidelines (cont'd)

- **Activate our higher altruistic motivation** (v. egoistic, collectivism, principlism) for the care of our clients (*uncoerced, sacrificial meeting of another's need without expectation of reward,*  
*because we implicitly value and genuinely empathize with them*)
- Through education, experience, new relationships, **seek to reduce the types and number of issues** we'd have to refer over
- **Consult carefully** for what is in the clients best therapeutic interest
- When referral is deemed beneficial, **identify and suggest effective therapists** who do work with these treatment issues and let client select



# Reporting Requirements- Abusive/Abused Clients

# Definitions of abuse

## 37-1-102. Chapter definitions.

- ▶ **(1) 'Abuse'** exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or **sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker;**
  
- ▶ **(23) Severe child abuse** means:
  - (A)** The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause **great bodily harm or death** and the knowing use of force on a child that is likely to cause great bodily harm or death;
  
  - (B)** Specific brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce **severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or retardation, or severe impairment** of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct;

# Mandated Reporters of 'reasonable cause'

- ▶ **Everyone** in Tennessee is a mandated reporter under state law. Any person with **reasonable cause to believe a child is being abused or neglected** must, under the law, immediately report to the Tennessee Department of Children's Services or to local law enforcement. The reporter can remain anonymous.

# What is Child Abuse and Neglect

- ▶ **Physical abuse**: **Non-accidental trauma or physical injury** of a child, or failure to protect a child from harm.
- ▶ **Neglect**: **Failure to provide for a child's physical survival needs** to the extent that there is harm, or risk of harm, to the child's health or safety.
- ▶ **Sexual abuse**: When a child is involved **in intentional sexual acts that produce sexual arousal and/or gratification for the perpetrator or sexual behaviors/situations in which there is a sexual component.**
- ▶ **Psychological harm**: A **repeated pattern** of caregiver behavior or **extreme incident(s)** that convey to children they are worthless, flawed, unloved, unwanted, endangered. May include both abusive acts against a child and failure to act.

# Slap-Happy

- ▶ New 16 yo female client brought to counseling by parents to work on non-compliance issues
- ▶ At 3rd session client presents as un-ordinarily withdrawn and down
- ▶ Client discloses that during an argument last week, the step-father slapped her in the face for using disrespectful language
- ▶ When talking to the parents, client's mother is happy that step-dad finally took charge in this way and reports 'no problems' with daughter since then

# Sock in Mouth

- ▶ Student starts crying on bus ride back home from church camp
- ▶ Previous night around campfire, she confessed anger at mother for putting a sock in her mouth for using inappropriate language
- ▶ Student was afraid that parents would find out, be angry and punish her
- ▶ Youth worker consulted on whether or not this constituted a reportable suspicion of abuse

# 2010 Tennessee Code Title 39 – Criminal Offenses Chapter 11

- ▶ (2) “**Bodily injury**” includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty
  
- ▶ (34) “**Serious bodily injury**” means bodily injury that involves:
  - (A) A substantial risk of death;
  - (B) Protracted unconsciousness;
  - (C) Extreme physical pain;
  - (D) Protracted or obvious disfigurement;
  - (E) Protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty; or
  - (F) A broken bone of a child who is twelve (12) years of age or less;

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# Neglect

- ▶ 1. Environmental e.g. leaking gas, open/broken windows
- ▶ 2. Nutritional e.g. begging neighbors for food, no food available
- ▶ 3. Medical e.g. not receiving necessary treatment
- ▶ 4. Educational e.g. after inability of school to engage parents to improve child's attendance
- ▶ 5. Lack of Supervision e.g. child put in situation requiring actions beyond their physical/mental ability, level of maturity
- ▶ 6. Abandonment e.g. in a car, at home without proper caregiver

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# 1. Which of these sexual activities should be reported to DCS?

- ▶ A. Sexual activity between a 14 yo female babysitter and a 12 yo male
- ▶ B. Consensual sexual activity between a 16 yo female and an 18 yo male
- ▶ C. Non-consensual sexual activity between a 16 yo female and an 18 yo male
- ▶ D. A and C
- ▶ E. A only

# Sleep-over

- ▶ 17 yo female invites several girlfriends for movie and sleep-over
- ▶ 16 year-old brother finger fondles one of his sisters' friends as she and he fall asleep while sitting close on bean bag before and after movie
- ▶ Friend tells sister about it, sister confronts brother and tells mother
- ▶ Mother calls youth pastor who calls for consultation on whether this constitutes reportable suspicion of abuse

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# Psychological Harm

- ▶ A **repeated pattern** of caregiver behavior or **extreme incident(s)** that convey to children they are worthless, flawed, unloved, unwanted, endangered. May include both abusive acts against a child and failure to act.
- ▶ It can occur as part of an **extreme one-time incident** (e.g. parent frustrated with child's bed wetting forces 6 yo child to wear diapers in the neighborhood)
- ▶ An injury that impairs child's intellectual, emotional or psychological development
- ▶ Verbal or non-verbal acts that reject and degrade a child e.g. degrading, shaming, ridiculing
- ▶ Terrorizing e.g. threatens to physically hurt, kill, abandon
- ▶ Isolating e.g. denying opportunity for outside interpersonal interactions



# Social Media- Managing Risks

# Definition of Social Media

“Activities, practices and behaviors among communities of people who gather online to share information, knowledge and opinions using conversational media”

(Boyd and Ellison, 2007)

# Use of Social Media

(excerpts from Best Practices for an Online World by Stephen Behnke (2014))

- ▶ Taylor et. Al. (2010) found 'most established' (didn't use them often, therefor not equipped) v. 'doctoral-level psychology students; (3/4 use social sites, inviting dilemmas)
- ▶ e.g. Chretien et al. (2009) found 60% of medical school students reported posting unprofessional online content e.g. disclosure of patient confidentiality, profanity, discriminatory language, depiction of intoxication and sexually suggestive material);
- ▶ Dillio and Gale (2011) found that 98 percent of doctoral psychology students had searched for at least one client's information over the past year

# 1. What 2 areas of ethics are considered most critical for effective management of social media?

- ▶ A. Confidentiality and Dual Relationships
- ▶ B. Client Autonomy and Attachment
- ▶ C. Informed Consent and Trustworthiness
- ▶ D. Mutually Acceptable Fees and Client Abandonment

# Dual Relationships and Social Media

- ▶ Contrasting strategies: conservative v. moderate views
- ▶ Slippery slopes v. role blending
- ▶ Boundary violations and boundary crossings
- ▶ 2 tests for boundary crossings: decreased therapeutic effectiveness and/or increased harm/violation

## 2. According to ACA Social Media H.6 code (2014), effective social media management includes:

- ▶ A. Establishing separate virtual personal and professional presences
- ▶ B. Getting consent to view our clients' virtual presence
- ▶ C. Avoiding any breaches of confidentiality and privacy through social media
- ▶ D. All of the above
- ▶ E. A and C

3. In regard to how we will use social media, clients have a right to know that we:

- ▶ 1. Will or won't 'friend' them
- ▶ We will never talk about anything we find out about them
- ▶ C. We will never discuss anything they find out about us
- ▶ D. All of the above
- ▶ E. A and B

# No -Show

- ▶ Case study: Neil (practicum student) and Nelly (client)
  - Nelly no-showed for 2<sup>nd</sup> session
  - Neil called and emailed to find out why Nelly no-showed
  - Neil looked up Nelly on Facebook
  - Neil read in her 'status' that she was depressed and had not left her home for several days
  - Neil informed his practicum supervisor about his actions



4. According to HIPAA's HITECH guidelines, if there is a social media breach of any kind we must always report:

- ▶ A. To the harmed client, if substantial harm results from the breach
  - ▶ B. To the effected client(s), the Secretary of the Department of Human Services, and the media
  - ▶ To the effected client(s) and the Secretary of the Department of Human Services
  - ▶ To the effected clients whether or not they are harmed
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**Confidential patient details  
were on this board**



**Jeremy Hunt in hot water after 'breaching patient confidentiality' by posting hospital visit picture on Twitter with board of names on it**  
**Jeremy Hunt posted picture today of himself with medics Hospital Image captured a board listing patients on the ward in background**

**Was defending plans for new seven-day working contract for NHS staff**

**Emerged picture was also taken yesterday and not during weekend shift**

Health Secretary Jeremy Hunt has been accused of breaching patient confidentiality by tweeting a photo to his 70,000 followers from a hospital visit.

He came under fire after the image of himself with medics at University College Hospital in London captured a board listing patients on the ward in the background.

The picture was soon edited to take out the information, but critics demanded Mr. Hunt issue an apology for the apparent breach in patient confidentiality.



**U.S. Department of Health and Human Services, Office for Civil Rights  
Breach Portal: Notice to the Secretary of HHS Breach of Unsecured Protected Health Information**



**Breaches Affecting 500 or More Individuals**

As required by section 13402(e)(4) of the HITECH Act, the Secretary must post a list of breaches of unsecured protected health information affecting 500 or more individuals. These breaches are now posted in a new, more accessible format that allows users to search and sort the posted breaches. Additionally, this new format includes brief summaries of the breach cases that OCR has investigated and closed, as well as the names of private practice providers who have reported breaches of unsecured protected health information to the Secretary. The following breaches have been reported to the Secretary:

	Name of Covered Entity	State	Covered Entity Type	Individuals Affected	Breach Submission Date	Type of Breach	Location of Breached Information
	Bryan Myers, MD PC, Ashley DeWitt, DO PC, Michael Nobles, MD PC	TN	Healthcare Provider	13150	12/30/2016	Hacking/IT Incident	Network Server
	Vanderbilt University Medical Center	TN	Healthcare Provider	3247	02/24/2017	Unauthorized Access/Disclosure	Electronic Medical Record
	Memphis VA Medical Center	TN	Healthcare Provider	687	03/01/2017	Unauthorized Access/Disclosure	Paper/Films
	American Home Patient	TN	Healthcare Provider	13861	03/06/2017	Theft	Desktop Computer
	Primary Care Specialists	TN	Healthcare Provider	65000	03/09/2017	Hacking/IT Incident	Network Server

# Resources for Social Media Ethics for Mental Health Professionals

- ▶ APA Guidelines (e.g. Best Practices for an Online World, S Behnke, 2014; Psychologist, Social Media and Digital Ethics with K. Ashton, L. Buckman and V. Wright, <https://www.apapracticecentral.org/business/social-media.aspx>)
- ▶ American Counseling Association (2014). ACA Code of Ethics. Alexandria, VA: Author Caruso, J.B., and Salaway, G. (2007). The ECAR study of undergraduate students and information technology, 2007. Boulder, CO: EDUCASE Center for Applied Research
- ▶ Social Media Policy, Keely Kolmes (2010), <http://drkkolmes.com>