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California Law & Ethics for Psychologists: Key Concepts Review

Introduction

“We do not act rightly because we have virtue or excellence but we rather have those because we have acted rightly. “
Aristotle

Psychologists have a long history of recognizing the importance of ethical principles to guide and inform the practice of psychology. Our ethical principles are reflected in our formal ethical standards and in civil and criminal laws pertaining to the practice of psychology. Although formal codes are not substitutes for an active process by which psychologists consider the dilemmas that may arise in the practice of helping others, they help to call our attention to key values and identify unacceptable behaviors. Our codes of conduct are updated to reflect changes in thinking about what constitutes best practices and to address changing needs of our clients. The ***State of California Laws and Regulations Relating to the Practice of Psychology*** was revised and updated in 2009. This course will review ethical standards and updates to California laws and highlight recent legislation. As a brief guide to this code and a review of ethics it is not intended as a substitute to consulting the ***Laws and Regulations*** or the ***APA's Ethical Principles of Psychologists and Code of Conduct***.

Objectives:

After finishing this course, the participant will be able to:

1. *demonstrate familiarity with the concept of confidentiality.*
2. *demonstrate familiarity with with the concept of privilege.*
3. *identify how long records must be maintained.*

Content of *Statutes And Regulations Relating To The Practice Of Psychology*

State of California Laws and Regulations Relating to the Practice of Psychology was developed by the California Board of Psychology to outline the important considerations related to the practice of psychology. As such it includes a number of broad topics such as denial, suspension and revocation of licenses, revenue information, regulations related to professional corporations, continuing education requirements, and information related on disciplinary actions. The California Board of Psychology website is located at http://www.psychboard.ca.gov and the manual can be downloaded from http://www.psychboard.ca.gov/lawsregs/2009lawsregs.pdf. This training material is meant to be used as a reference, and as such this training manual will not cite specific information such as fees or specific number of hours required for education, but will describe the broader issues related to these topics. For example, continuing education requirements are related to the need for psychologist to maintain competence in practice. Participants reading this training manual are encouraged to become familiar with the ***Laws and Regulations*** as well as ***APA Ethical Principles of Psychologists and Code of Conduct (APA Ethical Code).***

The ***APA Ethical Code*** sets forth the core values of our profession. The Ethics Code consists of two central aspects: a set of principles and a code of conduct. The principles are aspirational in nature and the ethical standards are enforceable rules for conduct. In general the APA code contains information that is applicable to clinical care and research. The ***Laws and Regulations*** are broader and also set forth topics that are related to the business of psychology as well as legal issues related to the practice of psychology.

The following sections of the ***Laws and Regulations*** were amended in the most recent version:

Business and Professions Code: Information about the Department of Consumer Affairs, information on denial, suspension and revocation of licenses, general provisions related to the healing arts including unprofessional conduct

480 Amended — Grounds for denial of licenses
490 Amended —Suspension or revocation of license in case of conviction of crime substantially related to practice
2920 Repealed — Board of Psychology
2933 Repealed — Board of Psychology staffing

Penal Code: defining crimes and specifying the punishment

11167.5 Amended — Confidentiality of mandated reporters

11170 Amended — Child abuse reporting disclosure

California Code Of Regulations: information related to Board of Psychology, psychological assistants, corporations, fees, continuing education

1387 Amended — Supervised professional experience

Competence

When clients place trust in psychologists, a primary assumption is that they will be competent treatment providers. Professional competence is at the heart of professional practice. It is also a standard specifically addressed by the APA Ethical Principles of Psychologists and Code of Conduct. Standard 2.01 **Boundaries of Competence** states: ”Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience.”

Pope and Vasquez (1991) state that competence is first achieved through formal education, professional training, and supervised experience. The ***Laws and Regulations*** identify applicant requirements for California licensure and also discuss best practices regarding continuing coursework, which is recommended in the areas of geriatric pharmacology, pharmacology and biological bases of behavior, aging and long-term care and HIV.

Epstein and Hundert (2002) define competence as “the habitual and judicious use of communication, knowledge, technical skills, clinical reasoning, emotions, values, and reflection in daily practice for the benefit of the individual and community being served” (p. 227). Competence is developmental and will change based on the individual psychologist’s stage of professional development. It is also context-dependent and varies depending on the setting.

With the increasing focus on the need for competence, the APA has developed a series of competency benchmarks. These benchmarks are developmental and cover key behaviors that are seen as critical for psychologists. The APA has also created a Competency Assessment Toolkit. For information on these initiatives please see http://www.apa.org/ed/graduate/competency.aspx.

In addition to the question of clinical competence, the question of cultural competence is an emerging area of importance. Davis (1997) defines cultural competency as the integration and transformation of knowledge, information, and data about individuals and groups of people into specific clinical standards, skills, service approaches, techniques, and marketing programs that match the individual’s culture and increase the quality and appropriateness of health care and outcomes. Saldena (2001) states that within cultural groups there is a

significant amount of variability that psychologists must consider in providing services. Areas to be considered include: level of acculturation, poverty, language differences, reading ability, beliefs and physical characteristics.

Emerging Area of Practice: Psychopharmacology

Barnett & Neel (2000) maintain that every psychologist involved in healthcare needs to understand basic psychopharmacology. California has specific educational requirements pertaining to psychopharmacology.

Confidentiality

One of the essential features of therapy is the notion of confidentiality. Confidentiality is a therapeutic, legal and an ethical issue. Clients have the right to expect that disclosures made as part of the therapeutic process remain private. Confidentiality is the obligation not to disclose willingly any information obtained in confidence. The fundamental intent is to protect a client's right to privacy by ensuring that matters disclosed to a psychologist not be relayed to others without the informed consent of the client. In discussing confidentiality, psychologists also hope to encourage communication.

Privileged communication is a legal concept. It addresses legal rights protecting clients from having their disclosures to psychologists revealed during legal proceedings without their informed consent. Privilege also describes the legal right of keeping clinical records confidential. (In California, this right is established in CA Evidence Code 1014.) The patient holds privilege.

It is important to remember that the right to confidentiality is not an absolute. In California law, there are several exceptions to the confidentiality, which also mirror APA guidelines. These concern harm to self or others:

- Reasonable suspicion of child abuse or elder adult physical abuse
- Reasonable suspicion that a person may present a danger of violence to others;
- Reasonable suspicion that a person is likely to harm him or herself unless protective measures are taken.

Reasonable suspicion occurs when “it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience.”

In all of these above cases, the psychotherapist is either allowed or required by law to break confidentiality in order to protect you, or someone you might endanger, from harm.

Mandated Reporting

California psychologists are *mandated reporters* and as such must report suspected child and elder abuse. It is important for practitioners and other mandated reporters to keep updated on periodic amendments in the law. Some of the general guidelines are outlined below.

The California Child Abuse Reporting Law is found in Penal Code Sections 11165-11174.3. Under the law, when the victim is a child (a person under the age of 18) and the perpetrator is any person (including a child), the following types of abuse must be reported by all legally mandated reporters:

a. **Physical injury** inflicted by other than accidental means on a child.
b. **Child sexual abuse** (including distributing pornographic materials involving children)
c. **Willful cruelty or unjustified punishment**, which includes inflicting or permitting unjustifiable physical pain or mental suffering, or the endangerment of the child's person or health.
d. **Unlawful corporal punishment or injury**, willfully inflicted, resulting in a traumatic condition.
e. **Neglect** of a child, whether "severe" or "general," must also be reported if the perpetrator is a person responsible for the child's welfare. It includes acts or omissions harming or threatening to harm the child's health or welfare.

If a mental health professional learns of or suspects abuse, they must file a report immediately by phone and then must prepare a written report within 36 hours of the initial report. The initial report should be made to any police department or sheriff's department or to a county probation department (if they are set up to take reports). Psychologists suspecting elder abuse must report these suspicions to Adult Protective Services. Written reports must be submitted on a Department of Justice form which may be downloaded from their website at www.ag.ca.gov. The mandated reporter must include information supporting the report.

Record Keeping

Although record keeping can at times feel like an onerous task, record keeping is an ethical mandate that carries with it a number of benefits. Records document treatment plans, therapeutic interventions, and client progress (American Psychological Association, 2007). Record keeping allows the psychologist to monitor his or her work. At times there may be a lapse in treatment contacts and

records help the psychologist to reorient him or herself. Appropriate records are also a protection in the event of the event of legal or ethical proceedings.

In California, per CA Health and Safety Code § 123105, the patient record should consist of the following: dates of sessions; fees and payments; clinical information including as diagnosis, treatment plan, records of psychological testing, and records gathered from other providers; and psychotherapy notes.

In the state of California, psychologists are required to maintain records for a minimum of seven years from the patient's discharge date. If the patient is a minor, the patient's records shall be retained for a minimum of seven years from the date the patient reaches 18 years of age.

Psychologists who are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) should be aware of certain record keeping requirements and considerations under HIPAA's Security and Privacy Rules.

Informed Consent

The principle of informed consent is one that has long been of concern to psychologists. Informed consent is a legal procedure to ensure that a patient or client knows all of the risks and costs involved in psychological treatment. The elements of informed consents include informing the client of the nature of the treatment, possible alternative treatments, and the potential risks and benefits of the treatment. In addition, it is important to inform clients at the outset of treatment about exceptions to confidentiality, fee arrangements and recordkeeping. In order for informed consent to be considered valid, the client must be competent and the consent should be given voluntarily.

Obtaining informed consent is a collaborative process that respects the client and informs the client about central aspects of the therapeutic relationship and obtains from the client consent to proceed. Through the process of becoming informed, the client receives information on which to base a considered decision; and the psychologist ensures that the decision to proceed with treatment and is not the product of coercion.

In addition to informed consent to therapy, the ***Laws and Regulations*** also highlights an emerging area: informed consent to telemedicine. Telemedicine is defined as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Telephone conversations and electronic mail communications between a psychologist and patient are not considered telemedicine. Clinicians must obtain informed consent prior to any service delivery via telemedicine.

Unprofessional Conduct

Article 10.5 details areas that are considered unprofessional conduct. These areas include: Excessive Prescribing or Treatment/Treatment for Intractable Pain and Sexual Intimacies between Therapist and Client.

Excessive Prescribing or Treatment/Treatment for Intractable Pain

Laws and Regulations lists as the first area of unprofessional contact excessive prescribing or treatment. California psychologists cannot legally prescribe medication. This prohibition is established in Section 2904 of the California Business and Professions Code.

Often, consumers seeking mental health services are taking medications or suffering from conditions that could be treated very successfully by medications prescribed by a physician. Many psychologists have extensive training and experience in the applications of medications. Psychologists may discuss medications with a patient. A psychologist may suggest to a physician a particular medication to be prescribed by a physician. However, the decision as to whether a patient should receive medication lies solely with the physician. A psychologist may engage in a collegial discussion with a patient's physician regarding the appropriateness of a medication for the condition being treated. A psychologist has primary responsibility to monitor the patient's progress in psychotherapy that includes assisting in monitoring the changes that may be attributable to the medication in the patient. Psychologists should maintain a close consultative relationship with physician to assure appropriate overall treatment of the patient.

Psychologists also need to be aware of treatment standards and protocols in order to avoid excessive use of diagnostic procedures or excessive treatment.

Sexual Relations with Patients

There are strict guidelines relating to sexual misconduct. The rule is simple: psychologists may not engage in a sexual relationship with a client. Sexual contact within two years after termination of therapy is also illegal and unethical. The California statutes state: “The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action.”

In addition to strong mandates prohibiting sexual contact between clients and therapists, the code also provides for additional steps in supporting clients that have been sexually involved with a treating professional. The statutes call for any psychologist who becomes aware that a patient has had sexual contact with a previous clinician during the course of a prior treatment, to provide to the patient a brochure that outlines the rights of, and remedies for, patients The brochure, entitled *Professional Therapy Never Includes Sex* is available for download from

http://www.bbs.ca.gov/pdf/publications/proftherapy.pdf and includes warning signs, reporting options, a patient bill of rights, how to get help and information on support groups.

Summary

The ***State of California Laws and Regulations Relating to the Practice of Psychology*** provides an important framework for practitioners. Review of this document as well as familiarity with the ***APA Ethical Code*** will allow psychologists to address ethical problems in an informed and competent manner.

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