The Portable Ethicist for Mental Health Professionals
A Complete Guide to Responsible Practice

Second Edition

With HIPAA Update

Thomas L. Hartsell Jr., JD
and
Barton E. Bernstein, JD, LMSW

JOHN WILEY & SONS, INC.
The Portable Ethicist for Mental Health Professionals
Other Books by the Authors


The Portable Ethicist for Mental Health Professionals
A Complete Guide to Responsible Practice

Second Edition

With HIPAA Update

Thomas L. Hartsell Jr., JD
and
Barton E. Bernstein, JD, LMSW

JOHN WILEY & SONS, INC.
To all of the mental health practitioners who struggle to ethically serve their clients.
Contents

Preface xi
Acknowledgments xix
Introduction xxiii

PART I
CLIENT ISSUES

1. Alternative Treatment Methods 3
2. Boundary Violations 21
3. Confidentiality 33
4. Dangerous Clients 55
5. Discrimination 69
6. False and Misleading Statements 81
7. Informed Consent 97
8. Interviewing 113
9. Prohibited Clients 123
10. Risky Clients 137
11. Repressed and Recovered Memory 151
12. Sexual Misconduct 163
13. Terminating Therapy 177
PART II
ETHICS CODES AND LICENSING
14. Areas of Ethical Complaints 197
15. Ethics Codes as Evidence 207
16. Licensing Board Procedures 217
17. Office of Civil Rights 231
18. Centers for Medicare and Medicaid Services 243
19. Reporting Statutes and Obligations 253

PART III
PRACTICE CONSIDERATIONS
20. Billing 267
21. Establishing a Practice 279
22. Closing or Interrupting a Practice 299
23. Kickbacks, Bartering, Fees, and Gifts 317
24. Malpractice Insurance 331
25. Record Keeping 347

PART IV
PROFESSIONAL ISSUES
26. Drug and Alcohol Use, Impairment 369
27. Duty to Warn 381
28. Interprofessional Issues 395
29. Professional Vulnerability 403
30. Supervision 413
PART V
SPECIAL THERAPY CONSIDERATIONS

31. Forensic Evaluation 435
32. Group Therapy 453
33. Don’t Do Dumb Stuff 469

Epilogue: Ethics in the Twenty-First Century 479

APPENDIX A Mental Health Professional Organizations 487
APPENDIX B Allied Healthcare Providers Professional and Supplemental Liability Insurance Policy 489
APPENDIX C Social Workers Professional Liability Claims-Made Policy 499
APPENDIX D Sample Jurisprudence Exam Questions 507

References and Reading Material 511

Index 515
Preface

Having been longtime observers of the mental health profession, we have come to know the value and benefits that its professionals offer to consumers of their services. Unfortunately, many of the consumers whom professionals take into therapy try to do them harm in return. With a proliferation of licensing boards and other regulatory authorities, consumers have easier and more numerous options to seek redress for perceived malevolent and negligent acts. With the advent of the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules, mental health professional clients come to us for assistance with a state licensing board complaint while seeking our help with a duplicate complaint filed by the same client with the Office of Civil Rights or the Centers for Medicare and Medicaid. The same therapist may hold two or more state licenses and each board may pursue its own investigation, disciplinary action, and sanctioning. Add to this, membership in professional organizations and specialty certifications, and you can see just how many outlets a client wishing to do harm or mischief to a mental health professional has to choose from.

The world is not a kinder and gentler place for mental health professionals. Professional associations, licensing boards, the federal government, certifying authorities, media, and clients are quick to judge negatively and punish the conduct of mental health professionals. There are more technical rules in place for mental health professionals to be aware of and to comply with. Jurisprudence exams are a direct result of the complexities in ethical codes and legal statutes and the need for regulatory authorities to increase knowledge and compliance with all of these rules and requirements of practice. It is much easier and more probable now for an overworked, undercompensated, and unappreciated mental health professional to make a technical mistake
that results in sanctioning even if the client has not been harmed or has even benefited from the therapy.

There has never been a more precarious time to practice one of the mental health disciplines. It is our goal to present ethical information and advice on how mental health professionals can practice with less risk of harm from clients. We want the book to be both a guide and a practice aid for practitioners as well as a teaching tool for instructors in mental health discipline educational programs. We weave in HIPAA rules where applicable as well as the ethical codes and canons of the major national professional associations. We devote entire chapters to identifying risky and dangerous clients.

Practitioners must remember, though, that they need to become knowledgeable about the specific state rules and statutes for the state and locations where they are providing services. It is not possible in a book of this length to be state specific, although the major ethical principles are applicable across the country.

Many years ago, the authors were asked to serve on a panel of experts; the topic was “Ethical Problems of Mental Health Professionals.” The other two panel members were both providers in the field of mental health; one was a PhD psychologist employed by a fledgling managed care company and the other was a clergyman who, at about age 40, decided to earn a counseling degree and change professions from the ministry to counseling. Armed with his advanced degree, he was pursuing a career as a counselor in a group practice.

When we assembled to prepare for the presentation, both mental health professionals were ready to deal with global questions, such as counseling with children about abortion, dealing with “tough love,” or the ethical consequences of needed treatment with limited funds. They wanted to discuss the big picture, ethical dilemmas that would make the participants think. These were problems that would evoke a thought process but would not necessarily provide concrete answers the participants could rely on and carry back to their offices. So the question arose: Did the attendees want to learn how to think or did they seek some practical suggestions about the ethical nuts and bolts of their profession?
When we suggested that ethics, in our opinion, concerned the published ethical canons or codes of their professions, we received only a blank stare. The psychologist allowed that she had taken an ethics course in graduate school about 10 years ago but remembered little about it; while the counselor admitted he had never taken a course specifically called “ethics,” but he received annual copies of the licensing law that contained the ethical codes. And where were these codes now? Lying unread in the bottom of his desk drawer, available to be studied on a moment’s notice should a complaint ever be filed against him with the state licensing board.

We were shocked and disappointed. As advocates and practicing attorneys who have represented mental health professionals before licensing boards, we assumed (incorrectly, apparently) that when the subject of ethics came up, we were referring to canons of ethics promulgated either by licensing boards or by national professional organizations. We were aware of the many individuals who had been disciplined by local boards or threatened with expulsion by national organizations. We faithfully read the publications of the various mental health disciplines that list by name and city the professionals disciplined for all manner of infractions or violations of ethical guidelines and list those who have been found guilty of misconduct. These individuals needed representation to protect their licenses, livelihood, and reputation. General postulates of ethical rights and wrongs are interesting topics to banter around in a profound conversation, but as attorneys educated in the adversary system, we felt that the target audience of mental health professionals would be more interested in ethical questions such as: How many ways are mental health professionals vulnerable? What does the state require regarding informed consent? Can you accept a referral fee for referring clients? What are some obvious and some subtle boundary violations or dual relationships? What kind of records can you keep and what kind of records must you keep? Guidance for all these problem areas is set forth in the published codes of ethics of the state board (and published in one form or another in the board rules of most sister states).

The argument was long and spirited without resolution. Since we couldn’t agree on anything else, each of the four presenters spoke for
Being that mental health professionals are working with clients who are often fragile and vulnerable, they must develop an intense awareness of ethical issues. On the other hand, mental health professionals would never intentionally harm their clients, students or colleagues and others whom they work with. Unfortunately, good intentions are not enough to ensure that wrong doings will not occur and mental health professionals have no choice but to make ethically determined decisions. Depending upon the experience and expertise of the professional determines the outcome of the ethical circumstance. (2008). The portable ethicist for mental health professionals: A complete guide to responsible practice (2nd ed). Wiley. Show More.