# *the* ETHICS *of* PRIVATE PRACTICE

*A Practical Guide for Mental Health Clinicians*

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*To you the reader, to all recipients of mental health services, and to Stephanie, Lauren, and Mary, for their support of all we do.*

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# PREFACE

The world of private practice is full of risks and uncertainties for the mental health clinician. Due to the ever-changing nature of our field, it may seem almost impossible to keep up with ongoing developments and best practice standards clinically, ethically, and legally. Running a successful private practice brings with it the need for knowledge and skill in the business aspects of practice. Even the most clinically competent practitioner will find numerous business aspects of practice to be challenging. Further, many of the aspects of running a successful mental health practice carry a range of ethical and legal challenges and pitfalls. We have written this book as a practical guide to help you examine the way you practice and consider the many options for reducing the risk of ethical transgressions.

Throughout the book we speak to you as if you are sitting in front of us seeking a consultation. Rather than adopting a formal writing style, we have decided to be more user-friendly with the intent to make this book a practical guide that you can read from cover to cover and also come back to from time to time when you have a question related to a particular chapter or ethical dilemma. Each chapter can stand on its own. As such you will find certain concepts addressed in multiple chapters (e.g., confidentiality, collections activities, marketing). In some places the concept is touched on, and in others it is dealt with in far greater depth with recommendations being made pertinent to the particular chapter. We have also designed this book for people who are at all levels of practice, including those just starting out, those transitioning into solo practice (whether part time or full time), those who already have an established solo practice, and those who are looking to develop a group practice.

In looking at ethical transgressions, we believe that most violations occur as a function of a lack of situational awareness, rather than intentionally hurtful or deceitful behavior on the part of the clinician. That is, many factors conspire to increase the likelihood of the professional exercising poor judgment. Some of these factors are:

- The administrative structure of the office
- Suboptimal financial policies and procedures

- Failure to obtain truly informed consent from all those involved in treatment
- Documentation processes that are lacking
- The need for protocols for sharing information with third parties and dealing with high-pressure requests for information
- How one supervises professional and administrative staff
- Marketing and advertising activities
- The need for a commitment to ongoing professional development and self-care
- Pressure that we feel to respond quickly in a situation

Certainly, although any one of these areas and others can lead to an ethical breach, the more risks that are present at one time the greater the likelihood that such a problem will occur.

Throughout this book we will address some issues that you may think relate more to the law than to ethics. There is a strong interaction between the two, such that behaviors that are illegal (e.g., fraudulent) are also unethical. Additionally, some of the requirements of the law (e.g., requests for documents) can put the clinician in an ethical conundrum, where in certain situations complying or not complying with a request can lead to charges of unethical conduct. In the following pages we address many places where the law and ethics converge.

Each chapter has a discussion of the common issues at hand with recommendations included in the text. We identify key risks and then practical options to address these risks with the goal of helping you decrease your vulnerability to inadvertent ethical pitfalls. Each chapter also includes specific lists of ethical challenges, key points to keep in mind, practical recommendations, and pitfalls to avoid, followed by a sampling of some pertinent ethical requirements (from multiple professional ethics codes) and references. The chapters also relate to one another, and you will see certain concepts introduced in one chapter and expanded in another.

We begin in Chapter 1 by addressing the issues you will likely confront when starting out in practice. Chapter 2 then focuses on the broader issues of clinical practice at any stage of one's career. Chapters 3 and 4 address the ethical issues related to documentation, record keeping, dealing with third party requests for information, and protecting confidentiality.

Chapters 5, 6, and 7 focus on the ethics issues relevant to the business of practice as we address ethics challenges and practices in areas such as the financial elements of practice, dealing with administrative and clinical staff, and advertising and marketing. Chapters 8 and 9 then get more focused on you, your professional development, self-care, and eventually leaving active practice. Thus, we take you through the lifespan of your practice, in different environments and from clinical, business, and personal perspectives.

One fundamental concept emphasized throughout the book is our belief that excellence in care comes from a convergence of factors that many people think are in conflict. We believe that the healthiest and most helpful practices provide

the best clinical care that mental health clinicians can provide (something that changes over the course of one's career as skills develop and fade), in an environment that operates based on sound business and ethical practice principles. These are not in conflict. We believe they actually support each other and are required to reliably reach the highest level of service delivery, while appropriately protecting both you and your clients (please note that the terms *client* and *patient* are used interchangeably throughout this book).

We hope this book will serve as a valuable resource that you will come back to time and time again as you work to develop the most effective, ethical, and legal private practice possible, and as you integrate the suggestions and recommendations provided in these chapters into your day-to-day business of practice activities. We hope you find this book to be thought provoking and that it will help you confirm that you are on the right track in many areas, giving you pause to consider options in others. If at some point in your reading you stop and say, "Gee, I didn't think of that," then we've done our job.

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# The Ethics of Private Practice

# 1

# Starting Out

## *Ethics Issues in Beginning a Practice*

Starting a private practice can be overwhelming for the new mental health professional. There are both clinical and business skills to learn in order to be successful in private practice. Additionally, ethics and legal considerations must be addressed if you are to develop an effective and sustained private practice. In this chapter we address the ethics and legal issues related to becoming licensed as a professional, supervision prior to licensure, choosing a practice, and practicing in integrated healthcare settings.

### BECOMING LICENSED TO PRACTICE

Much to the chagrin of many a graduate student and early career professional, it takes a long time to become licensed to practice independently as a mental health professional. In medicine a physician may become licensed quickly upon graduation from medical school. By contrast, before you can become licensed in psychology there are many rungs to climb while going up the career ladder. First, you have to obtain a doctorate. On average this takes 5 to 6 years, including internship. Then, in most jurisdictions, you have to complete a postdoctoral year of training. This is typically 1,500 to 2,000 hours in length. It may be completed in formal settings such as a university medical school, college counseling center, or a paid position in an agency or organization in which a licensed psychologist will provide the necessary supervision. This requirement may also be satisfied in an informal setting, such as a group private practice. Read the regulations in your jurisdiction carefully, as some jurisdictions have specific requirements about how many hours of supervision are required, in what venues (individual vs. group), and by whom (i.e., whether or not you can purchase supervision and whether the supervisor has to be a full-time employee of the facility). Other factors are the length of time the supervisor has been licensed and type of license.

To become licensed as a psychologist, you also have to earn a passing score on the Examination for Professional Practice in Psychology. Jurisdictions vary in when they will allow the prospective licensee to take this exam. Some allow this prior to completing all doctoral requirements, and others prior to completing all postdoctoral requirements. This exam focuses on knowledge of eight content areas in psychology in general, not specifically on clinical or counseling psychology (see http://www.asppb.net and click on EPPP Applicants/Students and then on Info for Candidates). Once a passing score is achieved based on the cutoff score for the jurisdiction in which you are seeking licensure, there are additional exams that must be passed. Their number and type vary by jurisdiction. Most jurisdictions have an exam that focuses on laws and regulations that govern the practice of psychology in that jurisdiction. This may include questions regarding required record keeping, involuntary hospitalization (the procedure to hospitalize clients who are a danger to themselves or others varies by jurisdiction), whether there is a "duty to warn" or "duty to protect" law in that jurisdiction (Werth, Welfel, & Benjamin, 2008; see also Chapter 2, "Dangerousness and Exceptions to Confidentiality"), and ethics, among a variety of other questions regarding practice in the particular jurisdiction. In addition, some jurisdictions then require an oral examination in which an applicant for licensure may present a case to a group of psychologists who will evaluate his or her competence to practice. Some jurisdictions (e.g., New York) also require the applicant to take an online course in child protection issues and procedures. See http://www.asppb.org/HandbookPublic/before.aspx for a list of examination requirements for psychology licensure in each jurisdiction.

As can be seen from the preceding, although it may take a psychology graduate student 5 to 6 years to obtain a doctorate, it may take another 1 to 2 years until you can become licensed to practice independently (i.e., without supervision) and call yourself a "psychologist." The education required for licensure in social work, professional counseling, and marriage and family therapy is typically less time intensive, because the entry-level degree is a master's degree. This varies, however, as many jurisdictions require 60 graduate credits to be eligible for licensure as a professional counselor rather then the typical 48-credit master's degree. Additionally, the supervised work experience for these professions is typically longer than for psychology, because psychology graduate students may accrue many more supervised clinical hours during their externships during the 4 or more years in their doctoral program and the yearlong internship they must complete.

From an ethical and legal standpoint, it is essential that those desiring to become licensed know and understand the statutory requirements. Each jurisdiction's licensing board posts this information on its website; it may also be obtained directly from the government department that oversees the practice of the profession within the jurisdiction (e.g., Board of Social Work). It is crucial to know whether licensure requires graduation from a program that meets specific accreditation requirements. For example, in psychology a few jurisdictions require graduation from an American Psychological Association (APA)–approved training program. Other jurisdictions may allow for graduation from a program deemed

"APA-approved equivalent." However, the burden is placed on the licensure applicant to document this equivalency. It is up to the applicant in all of the mental health fields to provide the necessary documentation that all requirements have been satisfied. As such, we suggest becoming an expert in the statutes governing practice in the jurisdiction in which you plan to become licensed, so that you can prepare properly during training. The importance of this suggestion should not be overlooked when planning your graduate education. For instance, some licensure boards may require you to complete specific courses. Thus, knowing the specific licensure requirements in your jurisdiction from the outset can influence the education and training experiences you select.

It also is wise to become familiar with the relevant statutes in any jurisdiction in which you think you might want to reside at a later date. For example, if you did your training in Wyoming and your family lives in Florida, and one day you want to live close to your family, then you should review the statute for practice in your discipline in Florida as well. This will help reduce the likelihood that you will have difficulties with licensure mobility. Knowing what is required in the jurisdictions where you may want to practice also can affect your selection of degree options, the courses you choose to take during training, and the amount of supervised clinical experience you complete.

## ACCURACY AND INTEGRITY IN COMPLETING LICENSURE APPLICATIONS

This may sound like a no-brainer, but from an ethical and legal perspective it is important when you fill out applications for licensure that you "tell the truth, the whole truth, and nothing but the truth." Licensure applications are not a place to embellish or exaggerate your qualifications. Indeed, most applications include a statement at the end indicating that providing false information on a licensure application constitutes a felony.

In addition to basic information such as demographic data, places of education, and degrees obtained, most licensure applications will also ask personal information, such as: Have you ever been arrested? Have you ever been treated for alcohol or drug abuse? Have you ever been treated for a mental disorder? Such questions may seem highly personal and, in your belief system, to be "nobody's business" but your own. However, you are ethically and legally responsible to answer these questions truthfully. The purpose of licensure is to protect the public. Whether it is good, bad, or indifferent that you have previously been treated for an alcohol problem, the licensing board has decided that it has a right to know this in making the decision to grant you the privilege to practice in their jurisdiction.

In our opinion, these questions are not asked to prevent you from practicing. Rather, they are used to inform the jurisdiction that this has previously been an issue and to allow you to provide documentation to demonstrate that it is no longer a problem area. It is especially important to be truthful just in case at a later date there is a relapse, such as drinking again. The licensure board may then prefer

that you participate in a treatment and monitoring program for impaired professionals as a way to protect the public and allow you to continue practicing once this is no longer an active problem. On the other hand, if they later discover that you had committed a felony by lying or omitting essential information on your initial application, this is typically considered grounds for the board to revoke your license to practice.

It is imperative that in the process of applying for licensure, you are explicitly clear that you have answered questions about the type and amount of postgraduate clinical hours, number of supervisors, and amount of supervision, as well as the relationship of your supervisor(s) to you and the postdoctoral facility, with the utmost care toward accurate reporting. This is as important as the representations about your training we mentioned previously. Mental health professionals have to engage in postgraduate training, have this work supervised, and then provide documentation of this training before they can even make an application for licensure in their jurisdiction. This points to the importance of recording and maintaining accurate records of all supervised clinical experience throughout your training.

## SUPERVISION PRIOR TO LICENSURE

Supervised experience may be obtained in a work setting or through a formal internship or fellowship program. The number of hours of supervised work experience required for licensure is determined by each individual jurisdiction, and these requirements are delineated in the jurisdiction's statutes or regulations. A few jurisdictions have eliminated the postdoctoral requirements of an additional year of supervised clinical experience for licensure for psychologists. However, because not all jurisdictions have done so, it may become problematic if the psychologist practicing in one jurisdiction wants to move to another jurisdiction that does have the postdoctoral training/supervision requirement. For example, Washington State does not have this postdoctoral requirement, but California does. If at a later date a psychologist licensed in Washington wants to move to California to practice, the California Board of Psychology may not recognize their Washington license. They would then have to complete the required supervised postdoctoral work experience before being allowed to be licensed in California, regardless of how long the person had practiced in Washington—whether it be 5, 10, or 20 years or longer. The safest way to assure this will not be an issue is to have a year of supervised work experience postlicensure even if it is not required in the jurisdiction granting the original license.

What is supervision? Bernard and Goodyear (2014) indicate that a significant amount of variability exists in the literature in defining this activity and responsibility. However, they describe that supervision focuses on legal, ethical, and professional issues, citing literature in which the supervisor takes legal and professional responsibility for the work of the supervisee. Thus the clinical activities of the supervisee become the legal responsibility of the supervisor. In our

view of supervision, a more senior, experienced, and expert professional accepts responsibility for the clinical services the subordinate provides, and also offers clinical oversight and training, to promote the supervisee's professional growth and development.

Thomas (2010) points out that informed consent is an important issue in the psychotherapist–client relationship. Ethically, providing adequate informed consent recognizes the autonomy of the client in respecting his or her right to decide whether or not to enter into a psychotherapy relationship. Clients should know the nature of the relationship, what is likely to take place in treatment, what fees are involved, and what happens if the treatment does not go well. In this vein, Thomas argues that informed consent for entering into a supervisory relationship is equally as important as when entering a psychotherapy relationship. She presents a table of informed consent supervision issues between supervisor and supervisee that are addressed in each of the mental health professions' ethics codes. These include: (a) supervisor privacy; (b) job duties and required experiences; (c) supervisor's credentials or orientation; (d) due process for supervisees; (e) supervision boundaries, multiple relationships, exploitation, and power; (f) documentation of consent; (g) evaluation; (h) required self-disclosure and personal growth activities; (i) fees; (j) conditions of supervision; (k) client privacy in supervision; and (l) disclosure of trainee status. Not all of the mental health professions emphasize each of these, but it is noteworthy that supervision has a prominent place in ethics codes.

For example, many years ago, one of us in our private practice was co-supervising a postdoctoral resident. The other supervisor was another partner in the practice. One day the supervisee was told that the co-supervisors were discussing a particular issue from a recent supervision session. The supervisee became upset, asking, "Whatever happened to confidentiality in supervision?" The immediate response was, "There is no inherent confidentiality in supervision. If you would like for there to be, then we can discuss putting that into place, but until we agree on it there is no confidentiality." A mutual understanding regarding confidentiality was then reached. The important thing to understand is that there had been a misunderstanding regarding this issue that was quite important to the supervisee and potentially damaging to the supervisory alliance and the level of trust in this relationship. If the nature of confidentiality of the supervisory relationship had been discussed and agreed upon from the beginning, this could have been avoided and there would have been no surprise.

It is important that the supervisor and supervisee develop a supervision contract at the outset of the professional relationship. Such a document provides a framework for the expectations and responsibilities of each party and outlines the nature of what is to take place during supervision. Thomas (2010) provides guidance for what information might be included in a supervision contract.

Barnett (2000) presents a checklist for ethical and legal considerations in the supervision process. An adaptation of this checklist for supervisees is presented in Table 1.1. These issues focus on assessment of competence, informed consent, confidentiality, the nature of the relationship between supervisor and supervisee