TP1/SP5

Ethical Decision Making

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Clinical Ethics
Practice and Theory

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Disclosure

The faculty members have no conflicts of interest or financial relationships to disclose.

Learning Objectives

• Identify the following and describe how the implementation of the objectives may impact or change their current clinical practice;
• Identify the components of the ethical concept of the clinician as fiduciary of the patient;
• Describe discreet professional virtues and two ethical principles that apply ethical concepts of the ethical relationship of confidence and trust of the patient in clinical practice; and
• Identify and implement a multi-step model for the practical management of ethical dimensions of clinical cases.
Evolution

- As psychologists evolve their professional practices from traditional mental/behavioral health practices to other types of practices, e.g., primary care behavioral health, they also by necessity evolve a new, and continually changing, professional identity.

- Situations arise in medical health care/primary care that are unique to this professional setting and the populations encountered, and to the roles and responsibilities within such settings, and that differ from those typically faced in a traditional practice. These differences result in unique ethical issues and concerns.

Evolution

- This professional evolution requires increased, and continuous, attention to ethical principles and standards, and frequent contemplation/consultation re: how changing roles and responsibilities can be fulfilled in keeping with appropriately ethical practice.

- Also required is ongoing familiarity with the ethical principles and standards of other health care professions with whom psychologists work in these new and expanding settings.

Evolution

- Behavioral health care providers/psychologists and medical care providers are trained differently, think differently, relate to patients and colleagues differently, relate to time differently, and practice under different standards and rules.

- Behavioral health care providers/psychologists integrating into medical care settings must adapt to the customs, practices, culture of the medical care setting, yet still practice in accordance within the pertinent ethical principles and standards for psychological practice.
That which is illegal can be unethical. That which is unethical may not be illegal. Both may go through a licensure board review and investigation. Legal, but not unethical (unless it is also illegal) could be processed through a court of law.

**Ethical & Legal**

- A patient presents with concerns of an inability to achieve orgasm with their partner. During trance, a suggestion is offered to disrobe and masturbate as a means of getting in touch with one’s sexuality.
- Clinician advertises “expertise” as hypnotist in a brochure after attending a Basic Workshop.
- Counselor uses hypnosis for the first time with a pregnant woman in an effort to minimize birthing pain and enhance postpartum recovery.
- Clinician charges twice a standard out of pocket fee for Hypnosis after taking a Basic Workshop.
Potential Challenges
Yapko 2003

- Spontaneous Regressions and Abreactions
- Symptom Substitution
- Confabulations
- Failure to Remove Suggestions
- Complications with Re-Alerting

SXS Substitution

- Onset of a new symptom that replaces an “old, unwanted” one
- Generally not of concern unless one is applying a dynamic or “depth-oriented” perspective of hypnosis
- If symptom substitution develops, Age Progression interventions where the symptom serves no purpose is usually helpful.
- Providing informed consent about hypnosis, typically abates this concern (Yapko, 2003).

Spontaneous regression
abreaction

- Of all potential challenges, these are the most likely to occur
- Not necessarily “new” to the Mental Health Professional
- Can be unpredictable and unexpected
- Typically occurs due to limited rapport and knowledge of the patient
- Suggesting a quiet, peaceful experience at the beach, yet the patient had a near drowning incident in the ocean
- Realize patients can go “anywhere” during trance and unconscious memories are “uncovered”
Failure to remove suggestion

- So many suggestions, so difficult to monitor . . . “what if . . .”
- Will a patient remain regressed indefinitely? Will someone anesthetized during hypnosis remain numb forever?
- NO. Our minds are capable of self-care
- Suggestions generally do not linger beyond the time they are needed (Weitzenhoffer, 2000) and are state specific (Rossi, 1996, 2002). Unless, of course the suggestion specified otherwise
- If concerns are apparent, have person go back into trance and suggest removal of suggestion prior to re-alerting
- An ounce of prevention: Prior to ending the session, provide a general invitation to remove any suggestions offered and encourage re-alerting.

Re-alerting

- Patient is still in trance despite re-alerting
- When does trance begin and end?
- Concern regarding person’s ability to drive a car after hypnosis
- Ensure that they are alert before leaving your office
- An ounce of prevention:
  - Promote re-alerting with suggestion that the patient will be as alert as they were before they entered your office though perhaps a bit more comfortable and relaxed.

A Reminder About Integrated Care

**NB:** Psychologists must carefully consider, and always be aware of, how the ethics code applies to their particular practice setting to protect and ensure patient welfare
Ethical Standards
Who is doing what?

Professional Associations
Codes of Ethics
- American Society of Clinical Hypnosis (ASCH)
- American Psychological Association (APA)
- American Counseling Association (ACA)
- American Mental Health Counselors Associations (AMHCA)
- American Association of Marriage and Family Therapy (AAMFT)
- National Association of Social Workers (NASW)
- American Medical Association (AMA)

Ethical Principals
- ASCH code of conduct
  - Ethical principals
    - Philosophical guidelines
  - Ethical Standards
    - Ethics
    - Licensure laws
    - Standards of practice
Ethics and Professional Conduct

- Codes of Ethics
  - American Society of Clinical Hypnosis (ASCH) Code of Conduct, while concise and broadly applicable, is more specific
- Sections:
  - Introduction
  - Ethical Principles
  - Ethical Standards

Ethics and Professional Conduct

- ASCH Code of Conduct

- Introduction
  - General overview
  - Clinician commitment to the Code of Conduct
  - Clinician requirements

Ethics and Professional Conduct

- ASCH Code of Conduct

- Ethical Principles: COMPETENCE
  - Use hypnosis only within bounds of training and expertise, and within context of professional relationship
  - Member’s expertise is determined by professional education, training, licensure, experience
  - Recognize and respect limitations to expertise
  - Strive to stay current: Research, issues, methods (continuing education activities)
Ethics and Professional Conduct

• ASCH Code of Conduct

• Ethical Principles: PROFESSIONAL RESPONSIBILITY
  • Serve best interests of patients/clients
  • Responsibility for patient care consistent with discipline and licensure
  • Obtain consultation/supervision when in doubt re: clinical practice
  • Participate and cooperate with inquiries re: clinical practice

Ethics and Professional Conduct

• ASCH Code of Conduct

• Ethical Principles: PROFESSIONAL RESPONSIBILITY
  • Accept responsibility for, and consequences of, behavior/clinical practice
  • Accept responsibility to monitor make appropriate changes to practice to comply with ethical principles and standards of the code
  • Seek to educate public about proper and scientific use of hypnosis

Ethics and Professional Conduct

• ASCH Code of Conduct

• Ethical Standards
  • Members uphold professional standards, ethics and codes of conduct of primary professional discipline
  • Maintain good standing in professional society or association that oversees member’s primary discipline
  • Maintain licensure to practice at the independent, unrestricted, unsupervised level
Ethics and Professional Conduct

- ASCH Code of Conduct

- Ethical Standards
  - Do not support practice of hypnosis by laypersons
  - Practice of hypnosis: provision of services, or the offer to provide services, utilizing hypnosis to individuals of groups regardless if a fee or honorarium is charged, offered or paid
  - Layperson: an individual lacking professional education and clinical training in a health care discipline including but not limited to those recognized by ASCH for membership and/or certification

Ethics and Professional Conduct

- ASCH Code of Conduct

- Ethical Standards
  - Layperson: or, an individual not pursuing a degree, from a regionally accredited institution, in a health care discipline including but not limited to those recognized by ASCH for membership and/or certification

Ethics and Professional Conduct

- ASCH Code of Conduct

- Ethical Standards
  - Except as provided for above, members do not provide hypnosis training to laypersons
Ethics and Professional Conduct

- ASCH Code of Conduct

- Ethical Standards
  - Public/Media Presentations
  - Members do not use, endorse, or assist in the use of hypnosis for entertainment purposes
  - Ensure any hypnosis demonstration is provided in manner that prevents or minimizes risk to audience
  - Ensure any presentation of hypnosis is within both the spirit of the Code of Conduct and the appropriate ethical guidelines of member’s professional discipline
  - Represent professional competencies, qualifications, capabilities honestly

- The Code Does Not Prohibit
  - Teaching hypnosis to individual or groups who, upon completion of training, would be eligible for ASCH membership
  - Teaching students of health care disciplines, including but not limited to those recognized by ASCH for membership and/or certification

- The Code Does Not Prohibit
  - Teaching patients or clients in the use of self-hypnosis for that individual’s own therapeutic use, or
  - Teaching about hypnosis in any forum that serves to properly educate and inform the consumer or professional public about hypnosis
## Ethics and Professional Conduct

- **ASCH Code of Conduct**

- **Ethical Standards**
  - In human subjects research, observe and abide by standards of primary professional discipline, taking appropriate precautions to avoid emotional/physical harm.
  - When the Code is unclear, seek guidance from ethical standards of primary professional discipline and/or appropriate licensing board.

## Ethics and Professional Conduct

- **ASCH Code of Conduct**

- **Ethical Standards: ENFORCEMENT**
  - Any person, whether or not ASCH member, may initiate ethics complaint against ASCH member.
  - Complaint must be submitted in writing to ASCH Ethics Committee, specifying time, place of violation; must be signed by complainant.
  - Specific procedures then followed by Ethics Committee (outlined in the Code).

## Ethics and Professional Conduct

- **ASCH Code of Conduct**

- **Ethical Standards: ENFORCEMENT**
  - Ethics Committee reports findings to ASCH Executive Committee and may recommend:
    - Dismissal of charges/complaint
    - Censure or warning
    - Suspension from ASCH membership
    - Expulsion from ASCH membership
Ethical Principals
- Ethical principals
- Professional Responsibility
- Competence
- Integrity

Ethical Standards
- Ethical standards
- Teaching hypnosis
- Media presentations
- Informed consent
- Practice Guidelines

Ethics
- What are ethics?
- What are common ethical issues that seem to surface in research?
- When should ethical issues be considered?
Ethics is...

- Ethics is the study of morality
- Central principles of ethics:
  - Reversibility – Would you want someone to do this to you?
  - Universality – Would you want everyone to do this?
- Other questions
  - Am I treating others with respect?
  - Am I violating the rights of others?
  - Am I treating others only as a means to my own ends?
  - Am I being honest with others and with myself?

Ethics is...

- Right vs. Wrong
  - Also known as your conscience
  - Usually a spontaneous decision
    - You instantly know right from wrong
- Who you are when no one is looking
  - If your mom was watching, would you still do it?

Ethics is not...

- Ethics vs. Morals
  - Ethics and morals are NOT always the same
  - Morals = personal view of values
    - i.e. beliefs related to moral issues such as drinking, sex, gambling,
    - Can reflect influence of religion, culture, family and friends
  - Ethics = how a moral person should behave
    - Ethics transcends cultural, religious, and ethnic differences
Ethics is not...

- **Examples:**
  - Bob is a deeply religious person and believes that sex before marriage is immoral.
    - However, sex, in and of itself, is not unethical.
  - Sarah’s parents taught her that drinking alcohol is immoral,
    - but drinking is not unethical

Ethics is not...

- Ethics is not about “getting caught”
  - Even if you get away with something, it may still be unethical
  - Ethics is not defined by what happens to you, but by your thoughts and actions

- Ethics is not about placing blame
  - Do not judge other students based on their personal beliefs

Ethics

- Ethics: principles for guiding decision making and reconciling conflicting values
  - People may disagree on 'ethics' because it is based on people's personal value systems
  - What one person considers to be good or right may be considered bad or wrong by another person
  - Conflict between Ethics and Law
Major approaches to ethics

- Deontological Approach
  - This approach states that we should identify and use a Universal code when making ethical decisions.
  - An action is either ethical or not ethical, without exception.

Ethics and Professional Conduct

- Approaches to Ethical Thinking
  - Rules / Rights Based (Deontological)
    - 18th Century; Immanuel Kant
    - Are rules and rights of individuals upheld? (right to choose, truth, privacy, not to be injured, what is agreed)
    - Are the moral rights of everyone upheld by decision(s); if not, action is unethical

Major approaches to ethics

- Ethical skepticism
  - This is the relativist viewpoint, stating that ethical standards are not universal but are relative to one's particular culture and time.
Major approaches to ethics

• Utilitarianism
  • This is a very practical viewpoint, stating that decisions about the ethics of an action should depend on the balance of the consequences and benefits for the participants and the larger society.

Major approaches to ethics

• The utilitarian approach is used by most people in academia (such as Institutional Review Boards).
  • "Do the potential benefits outweigh the risks associated with this?"

Ethics and Professional Conduct

• Approaches to Ethical Thinking
  • Utilitarian
    • 19 Century; John Stuart Mill, Jeremy Bentham
    • Greatest balance of good over evil
    • Ethical action is one which provides greatest good for greatest number
    • Result is of principal importance; best result for most people is ethical decision/action
Applied Ethics: Medicine, Law, Rights, Responsibility

- Different philosophical positions lead to different conclusions
  - Example: Is it right to tell a terminally ill patient that they are about to die?
    - Deontologist says yes, because telling the truth is the right thing to do
    - Utilitarian says no, because higher responsibility is to reduce suffering

Understanding Your Legal Obligations

Malpractice

- “A form of negligence that occurs when a practitioner acts in a manner inconsistent with the profession’s standard of care—the way an ordinary, reasonable, and prudent professional would act under the same or similar circumstances”
Malfeasance

- Where the professional intentionally engages in a practice known to be harmful
- Malfeasance is ordinarily defined as the commission of a wrongful or unlawful act (Bernstein & Hartsell, 1998; Gifis, 1991).
  - A therapist who engaged in a sexual relationship with a client after convincing her that this would be therapeutic
  - A therapist who used techniques without proper training or empirically based evidence of effectiveness
- Could all potentially be accused of malfeasance

Misfeasance

- Where the professional makes a mistake in the application of an acceptable practice Employer
- Getting in trouble for things you did
  - A therapist who used hypnosis, negligently
    - Either because of inadequate training or lack of skill
  - Might be accused of misfeasance; these clinical approaches, which are based on solid research and theoretical foundations, should only be used by practitioners who have sufficient training, knowledge, and competence.
Nonfeasance

- Where the professional fails to apply a standard, acceptable practice when action is needed
  - Getting in trouble for what you didn’t do
    - (e.g., realerting).
  - Failure to refer a client for consultation or treatment

Ethical Principles

Clinical Integrity

- Non-malfeasance
- Beneficence
- Autonomy
- Justice

Dr. John Tuohey, “Pandemic Planning.”

Ethical Principles

- Sometimes there is ethical tension between beneficence
  - (attaining a beneficial outcome) vs. non-malfeasance (not inflicting harm)
- It is important to weigh the chance of success against risks of treatment
Ethical Principles

- Justice
  - Requires that people be treated fairly. (It is often understood to require that benefits and burdens be distributed fairly within society.)
  - Treat all patients equally – no unfair discrimination
  - Distributive justice

Brainstorming exercise

- list of “wrongs” in clinical practice with hypnosis
  - Are they ethical
  - Legal
  - Moral

How Effective Is Hypnosis?

Results of Comparative Study by American Health Magazine:

- Psychoanalysis: 38% recovery after 600 sessions
- Behavior Therapy: 72% recovery after 22 sessions
- Hypnotherapy: 93% recovery after 6 sessions
Ethics is not…

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Ethics

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Models and implications

Ethical Decision Making

- The principles that underlie helping professional codes
  - Benefit others, do no harm, respect other's autonomy, be just, fair and faithful

- The role of ethical codes
  - They educate about responsibilities, are a basis for accountability, protect clients, are a basis for improving professional practice

- Making ethical decisions
  - Identify the problem, review relevant codes, seek consultation, brainstorm, list consequences and decide
Rationalizations
(and who doesn't sometimes?)

- If it's necessary, it's ethical
- If it's legal, it's ethical
- I was doing it for you
- I'm just fighting fire with fire
- It doesn't hurt anyone
- Everyone's doing it
- It's okay as long as I don't gain personally

How to Be an Ethical Person

- Non Malfeasance
  - Do no harm
    - Avoid inflicting physical, mental, or emotional harm
- Beneficence
  - Benefit others
    - Offer assistance and improve the lives of others, even if it may inconvenience you

How to Be an Ethical Person

- Justice
  - Be just
    - Treat everyone equally or Follow the Golden Rule
- Fidelity
  - Be faithful
    - Keep promises, tell the truth, be loyal, and maintain respect and civility
- Autonomy
  - Respect autonomy
    - Everyone has the right to decide how they live their lives, as long as they do not interfere with the welfare of others
Nonmaleficence
• Do no harm
• Avoid harm
• Prevent harm

Beneficence
• Act in such a way as to provide a benefit for the patient
• According to the usual goals of medicine
• In terms of the patient’s value system

Justice
• “Give to each that which is due.”
• According to:
  • merit
  • need
  • equally
  • potential for contribution
Respect for Autonomy

- Self-Rule
- Self-Determination
- Patient’s unique set of: values, goals, desires, experiences

Autonomy & Hypnosis

- Autonomy implies competence
- Legal age of decision making
- Minors and autonomy
  - the age of assent
  - exceptions for reproductive decisions
- The ability to understand medical information and to relate this to one’s life plan and priorities
- Logical consistency with one’s goals

Informed Consent

- This is the process of providing the participants with information enables them to make an informed decision as to whether they want to participate in the designated type of therapy or procedure.
  - State the purpose of the procedures to be followed.
  - Describe any potential risks or discomforts the participant may encounter.
  - Describe any potential benefits from participation.
# Informal Poll

- Do you provide informed consent for hypnosis to your patients
  - Why not
  - In writing?

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# Problems related to incompetence

- Incompetence: a legal definition
- Incapacity: a clinical definition
  - patients' capacity may wax and wane
  - capacity for this decision at this time?
- Creates a need for a surrogate
  - substituted judgement
  - best interest principle

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# Simple process

- Identify the problem
  - What is the ethical dilemma?
- Identify the values at stake
  - What are you gaining by acting ethically or unethically?
- Evaluate the options available to you
- Choose the best option
  - Remember the rationalizations
  - Wrong is wrong, even if you don’t get caught
Ethical Decision Making
A Multi-Step Model

Ethics and Professional Conduct

A Process Model for Ethical Decision Making

1. Define Situation Clearly
   - Exact nature of situation
   - Gather relevant facts and details
   - Identify primary concern, issue, conflict
   - Begin to consider potential ethics issues and obligations

2. Determine Who Will be Impacted
   - Identify primary and other patients
   - Consider full range of persons who might be impacted by decision(s)
   - Articulate professional obligations to and rights of each person involved
Ethics and Professional Conduct

— A Process Model for Ethical Decision Making

• 2. Determine Who Will be Impacted
  — Be sensitive to potential harm to any person involved
  — Reflect on your obligation to promote best interests of those involved
  — Begin to consider potential impact of various decisions on those involved

— A Process Model for Ethical Decision Making

• 3. Refer to Ethics Principles and Standards
  — Review discipline ethics code
  — Identify standards and general principles most germane to situation
  — If specific standards are ambiguous re: situation, consider more fundamental obligations per general ethics principles

— A Process Model for Ethical Decision Making

• 3. Refer to Ethics Principles and Standards
  — Consider consulting current ethics texts, articles for additional guidance, case examples
  — Use ethics code to eliminate unethical responses
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<td><strong>A Process Model for Ethical Decision Making</strong></td>
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<tr>
<td>• 4. Refer to Relevant Laws, Regulations, Professional Guidelines</td>
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<tr>
<td>- Review legal statutes, regulations bearing on discipline in your jurisdiction</td>
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<td>- Consider agency, institutional policies</td>
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<tr>
<td>- Identify, review any relevant practice guidelines bearing on situation, patient type, problem, type of service</td>
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<td>• 4. Refer to Relevant Laws, Regulations, Professional Guidelines</td>
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<tr>
<td>- Consult with attorney to determine legal obligations and legal consequences of various courses of action</td>
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<td>- Consult with colleagues or ethics bodies concerning potential conflicts between ethical and legal obligations</td>
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<td>• 5. Reflect Honestly on Personal Beliefs, Feelings, Competence</td>
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<tr>
<td>- Reflect honestly about thoughts, feelings evoked by situation</td>
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<td>- Consider whether evoked feelings about yourself and/or others involved may negatively impact decision making</td>
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Ethics and Professional Conduct

—A Process Model for Ethical Decision Making

• 5. Reflect Honestly on Personal Beliefs, Feelings, Competence
  —Honestly consider whether you have requisite competence — defined by education, training, supervised experience — to manage situation (treatment) effectively/appropriately

—A Process Model for Ethical Decision Making

• 6. Consult with Trusted Colleagues
  —Carefully select one or more colleagues whom you know to have experience in the area of concern, good judgment, solid familiarity with ethics and legal issues
  —Seek consultant referrals from local/national professional organizations

—A Process Model for Ethical Decision Making

• 6. Consult with Trusted Colleagues
  —Select consultants who are honest, forthright, respectful of confidentiality
  —Prepare carefully for consultation by
    summarizing key facts, apparent ethics issues, personal concerns, possible courses of action
Ethics and Professional Conduct

-A Process Model for Ethical Decision Making

• 7. Formulate Alternative Courses of Action
  – Consider full range of possible responses to situation
  – Consider all ways you might proceed in light of facts at hand
  – Consider feasibility and ethical and legal implications of each approach

Ethics and Professional Conduct

-A Process Model for Ethical Decision Making - Reviewed

• Clarify
• Evaluate
• Decide
• Implement
• Monitor, modify

Four Box Method
### Indications for Intervention

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<th>Quality of Life</th>
<th>Preferences of the Patient</th>
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### Indications

- What is the patient's medical problem, diagnosis, prognosis?
- Is it acute, chronic, critical, reversible?
- What are the goals of hypnosis and probabilities of success?
- In case of therapeutic failure, what plans?
- How can benefit be provided - harm avoided

### Patient Preferences

- What preferences for treatment has the patient expressed or refused?
- Does the patient understand the risks and benefits and has the patient given consent?
- Is the patient competent, is there evidence of incapacity to make decisions?
### QUALITY OF LIFE

- What are the prospects, with or without treatment, for a return to normal life?
- Any biases that might prejudice your evaluation of the patient’s quality of life?
- What physical, mental, and social deficits may remain, even if hypnosis succeeds?

### CONTEXTUAL FEATURES

- Family issues influencing treatment choice?
- Physician-Nurse issues influencing?
- Financial, economic, scarcity issues?
- Religious, cultural factors?
- Institutional, professional or legal issues?
- Any justification to breach confidentiality?
- Or to act contrary to the patient’s wishes?

### Client’s Rights

- Clients need enough information about the counseling process to be able to make informed choices
- Educate clients about their rights and responsibilities
- Confidentiality is essential but not absolute
  - Exceptions:
    - The client poses a danger to others or self
    - A client under the age of 16 is the victim of abuse
    - The client needs to be hospitalized
    - The information is made an issue in a court action
    - The client requests a release of record
Multicultural Issues

- Biases are reflected when we:
  - Neglect social and community factors to focus unduly on individualism
  - Assess clients with instruments that have not been normed on the population they represent
  - Judge as psychopathological ~ behaviors, beliefs, or experiences that are normal for the client’s culture

Ethical Overview

- Being ethical involves aspirational sensitivity to moral concerns (e.g., avoid unnecessary harm, respecting rights, acting with integrity)
- Code of conduct can never be sufficient because being ethical involves judgment, and application of ethical principles to specific contexts
- Being ethical changes & evolves with profession and society

Summary
Key Points

- The most commonly accepted principles of medical / psychology ethics include:
  - Respect for Patient Autonomy
  - Beneficence and Non malfeasance
  - Justice
- Other principles include informed consent, confidentiality and honesty
- Ethical discussions need to take into account the cultural situation in which they occur.

Take Away Point

Pluralism of opinions within communities necessitates clarifying patient’s wishes and the clinicians responsibilities in order to act ethically

References