




Practice Guidelines for Psychotherapists Working in Schools


Presented By Sara Jasper, J.D.
CAMFT Staff Attorney



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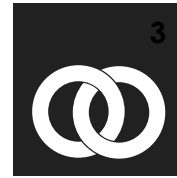
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Workshop Overview

- General Topics Covered
- Schedule/Breaks
- Use of Case Vignettes/Common Scenarios
- Questions

Disclaimer

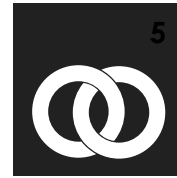


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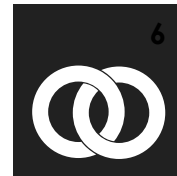


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Work of School Counselors

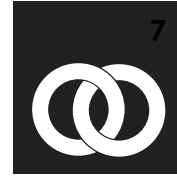
- Services provided by a school counselor:
 - Assessment
 - Academic Counseling
 - Career Counseling
 - Crisis Intervention
 - Social Skills Development
 - Supervision of Peer Counseling Programs
 - Relationship-based therapeutic services



Work of School Counselors

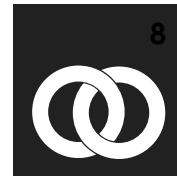
- Your work may fall at various points along a continuum with “academic counseling” on one end and “personal/relationship counseling” on the other.

Planning for School-Based Services: Key Issues



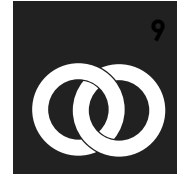
- The importance of planning cannot be overstated. Prior to delivering services, it is necessary to **define the goals and objectives of the program**, the **procedures to be utilized**, and the **roles and responsibilities of those involved**. This will help you determine whether consent is required and how to handle requests for students' behavioral health information and records.
- The following key issues should be addressed when planning services:

Planning for School-Based Services: Key Issues



- What are the overall goals and objectives of the program? For example, is the purpose of developing school-based mental health services to provide behavioral health counseling to any student who may be interested?
- What specific services are being contemplated?
- What is the anticipated level of demand for the services provided? Are there enough providers available to meet the anticipated demand?

Planning for School-Based Services: Key Issues



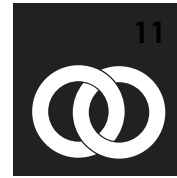
- Where will the services be provided? Does the school have adequate and suitable space to provide such services? How many rooms are available for use? Are they suitable for the purpose of counseling/therapy? Are the rooms adequate in terms of confidentiality?
- How will students access the intended services? For example, can a student "drop in" and ask about the availability of services, or, is it necessary for the student to be referred to the program?
- Who will have the authority to refer students to the program? What are the specific criteria for such referrals?

Planning for School-Based Services: Key Issues



- Is there a limit to the amount of services that a student may receive?
- What are the policies and procedures for intake of a new client? How will parental consent be obtained?
- Does the program intend to provide crisis intervention to students? If so, what are the specific procedures involved when a student is determined to be a danger to himself/herself, or to others?

Planning for School-Based Services Key Issues



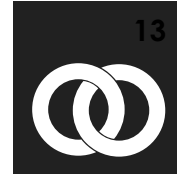
- Where will treatment records be stored?
- Who is the custodian of treatment records?
- Who will have access to the treatment records?

Consent for Treatment



- It is always necessary for a therapist to obtain the appropriate consent for treatment, prior to rendering services to a minor client.
- However, it may initially be unclear whether a student would benefit from, or be interested in, behavioral health treatment.
 - Limited screening vs. Formal evaluation and treatment

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Consent for Treatment

- Clarify who has the authority to provide consent.
- General Rule: It is generally desirable/helpful to involve both parents in the treatment of a minor.
- When the consent of both parents is not required, consider the child's needs and the particular facts/circumstances of the request.

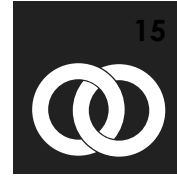
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Consent to Treat Minors

- Who May Consent?
 - California law permits parents and others, such as legal guardians, to consent to the behavioral health treatment of minors.
 - California law also authorizes minors (persons under 18 years of age), in certain statutorily prescribed circumstances, to consent to their own behavioral health treatment.
 - With this in mind, what information should you request?

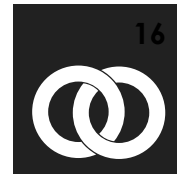
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Consent to Treat Minors

- Actions you should take:
 - Determine the minor's age.
 - Determine the relationship of the individual requesting the service.
 - Determine whether there are any applicable court documents to review.
 - Instruct students or their representatives to bring any relevant documents to the session.
 - Ask students or their representatives to submit the documents to you in advance of the session.

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Consent to Treat Minors

- With this information you can determine the following:
 - 1) Whether the minor can consent to his or her own treatment
 - 2) Whether the person making the request for services is legally authorized to consent to the minor's treatment.

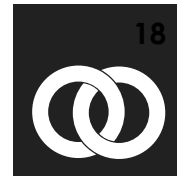
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Consent to Treat Minors

- If the minor's parents are married, either parent may provide consent.
- If the minor's biological parents were never married, either may provide consent.

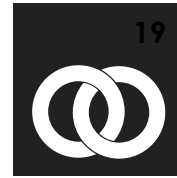
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Consent to Treat Minors

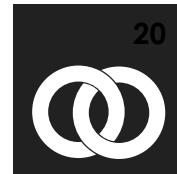
- If minor's parents are divorced, the therapist must determine whether there is joint legal custody or sole legal custody of the child.
 - When one parent has sole legal custody, only that parent may provide consent.
 - When there is joint legal custody, in the absence of specific language in the custody order which requires both parents to consent to medical and/or mental health treatment, either parent may provide consent.

Consent to Treat Minors Legal vs. Physical Custody



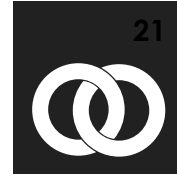
- Legal custody speaks to the **authority** of a parent **to make decisions** on behalf of his or her child, including mental health treatment.
- Physical custody addresses **where the child will be** spending his or her time.
- The fact that a minor lives with one parent does not mean the other parent lacks the authority to make decisions on behalf of that child.
- **Therapists should focus on legal custody** when addressing minor consent issues.

Consent to Treat Minors



- Parents who disagree:
 - If therapist seeks the consent of both parents for treatment of a minor and parents disagree about whether to authorize treatment, the parent seeking treatment may need to approach the court to have the court decide whether treatment is in the child's best interest.

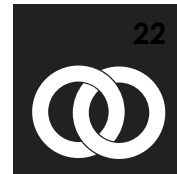
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Consent to Treat Minors

- If the minor lives with a relative who qualifies as an “authorized caregiver,” the relative may provide consent.
 - The relative must complete a Caregiver Authorization Affidavit.
 - A copy of the affidavit is available on CAMFT's website under the Resources tab, under the Legal Forms link.
 - Qualified relatives include: siblings, uncles, aunts, grandparents, etc. The qualified relative form includes a list of all those who may sign for treatment.

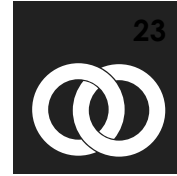
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Consent to Treat Minors

- Adoptive Parent:
 - Adoptive parents have the same rights as biological parents regarding mental health treatment decisions.
- Foster Parent:
 - Foster parents do not generally have the right to make health care decisions for their foster children.
 - Generally, the legal guardian of a child in foster care would make such decisions.

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Consent to Treat Minors

- Health and Safety Code §124260 provides that a minor who is 12 years of age or older may consent to mental health treatment or counseling services if, in the opinion of the therapist, the minor is mature enough to participate in the services.

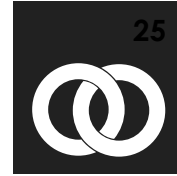
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Consent to Treat Minors

- Trainees are authorized to provide mental health services based on a minor's consent as long as they are working under the supervision of licensed professionals.
- The law requires trainees to notify their supervisors, or an on-call supervisor, within 24 hours of treating a minor.
- If, upon the initial assessment, a trainee believes a minor to be dangerous to self or others, the trainee is required to notify the supervisor immediately after providing treatment.

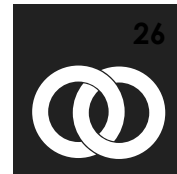
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Consent to Treat Minors

- Family Code §6924 also permits a minor who is 12 or older to consent to his or her outpatient mental health treatment if he or she, in the opinion of the therapist, is mature enough to participate in the outpatient services or residential shelter services, and he or she would present a danger of serious physical or mental harm to himself/herself or to others without treatment, or, is the victim of incest or child abuse.

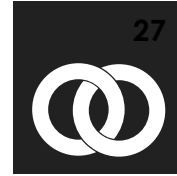
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Consent to Treat Minors

- These codes require a therapist to **notify** the parent or guardian that treatment is being provided unless, in the opinion of the therapist, the notification would be inappropriate.
- If inappropriate, the therapist must document why in the clinical record.
- A minor who is emancipated, married, or a member of the armed services may consent to his or her treatment.

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Common Scenario

- When a member of the school staff or administration would like to refer a student for assessment or treatment, should the child's parents be contacted before doing so?
 - Does the child need and is the child receptive to behavioral health counseling?
 - Limited screening
 - Be clear about the purpose of the meeting and the limits of confidentiality.
 - Not a client/patient just because met
 - Unless informed, reasonable for student to assume confidential communication
 - Treatment recommended, obtain consent

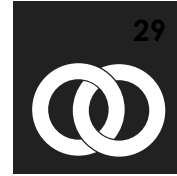
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Applying the Law

- A mother of a 6-year-old girl contacts a therapist seeking treatment for her daughter. She also tells the therapist that the father is against psychotherapy and would not approve of treatment. The mother believes the daughter should have someone to talk to professionally about how she is dealing with the divorce. She indicates the child has been having nightmares and cries whenever she has to visit her father. The mother states she has custody of the child and the father visits her every other weekend.

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Applying the Law

- Grandmother requests treatment for her 11-year-old granddaughter. She indicates the child's mother ran off to Europe with her boyfriend leaving her with the sole responsibility of caring for the minor and that the child is having a difficult time coping with the absence of her mother.

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Articles to Read

- *Guidelines for Treatment of Minors*
- *Treatment of Minors Without Parent Consent*
- *Consent for Treatment of Minors with Divorced Parents*
- *Consent for Treatment of Minors: Caregiver Authorization*
- *Blue Levis and White T-Shirts: When Treating Minors 12 Years of Age or Older*

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The Clinical Record



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Recordkeeping

- When you are offering behavioral health services to students, record keeping is not optional.
- Legal and ethical standards require you to create and maintain a record of the treatment provided.



Recordkeeping

- California Business & Professions Code §4982(v):
 - The failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered is considered to be unprofessional conduct.



Recordkeeping

- CAMFT Code of Ethics Section 1.15 Documenting Treatment Decisions:
 - Marriage and Family Therapists are encouraged to carefully document in their records when significant decisions are made, e.g., determining when a patient is a danger to self or others, when making major changes to a treatment plan, or when changing the unit being treated.



Recordkeeping

- CAMFT Code of Ethics Section 3.3 Patient Records:
 - Marriage and Family Therapists create and maintain records, whether written, taped, computerized or stored in any other medium, consistent with sound clinical practice.



Recordkeeping

- How Does This Translate to Day-to-Day Practice:
 - In simple terms, progress notes are brief, written notes in a client's treatment record which are produced by a therapist as a means of documenting aspects of his or her client's treatment.
 - There is no single correct or ideal format for writing progress notes. Your record doesn't have to look like your colleague's record.
 - If your colleagues were to read one of your clinical records, at a minimum, it should be possible to get a sense of your assessment of the client, the nature of your treatment plan, the services being rendered and your opinion of the progress being made.



Recordkeeping

- The purpose of Progress Notes:
 - Without progress notes, it would be difficult, if not impossible, for you to create a health care record that accurately reflects your sound clinical judgment, the standards of the profession, and the nature of the services being rendered.
 - Progress notes document competent treatment, including the therapist's ongoing assessment of his or her client and the exercise of clinical judgment.
 - Progress notes help explain why the client is or isn't making progress. For example, they may reflect whether the client has been cooperative with the treatment plan.



Recordkeeping

- The Purpose of Progress Notes Continued:
 - Progress notes may reflect the presence of complicating factors in a case (multiple diagnoses or complex family dynamics, etc.).
 - Progress notes provide evidence of the client's need for treatment at a particular point in time (i.e. medical necessity for treatment).
 - Progress notes may provide evidence that the treatment provided to the client was consistent with applicable standards.
 - Progress notes demonstrate the therapists' awareness of, and response to, risk factors, such as circumstances involving a possible risk of harm to self or others, etc.



Recordkeeping

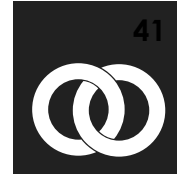
- The Purpose of Progress Notes Continued:
 - If your conduct is challenged by the client, the client's representative or by the Board of Behavioral Sciences, progress notes may help to establish that your conduct was ethical and lawful.



Recordkeeping

- When you read your own records, ask yourself the following questions:
 - Is the documentation a positive reflection of the quality of your work?
 - What if you had to show the record to your client?
 - What if you were asked about the record in a deposition?
 - What if a peer-review committee were reading your record?
 - What if some of your colleagues were handed the record and asked for their opinion about the treatment being provided?

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Recordkeeping

- Things you should never do:
 - Don't fail to keep a record
 - Don't write down everything in the hope that you covered the basics.
 - Don't wait until months after the treatment occurred to write your notes.
 - Don't assume the treatment record is unimportant or a waste of time based on the assumption that it will never see the light of day.

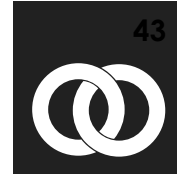
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Recordkeeping

- Retention of clinical records:
 - Prior to January 1st of 2015, there was nothing in the law related to LMFT's or LCSW's that required records to be maintained for a specific period of time. Best practice was determined by what the law required of psychologists and licensed health care facilities.

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Recordkeeping

- As of January 1, 2015, Marriage and family therapists, licensed educational psychologists, licensed clinical social workers, or licensed professional clinical counselors are required to retain the client's or patient's health service records for a minimum of 7 years from the date therapy is terminated.
- The law requires a minor client's or minor patient's health service records to be retained for a minimum of 7 years from the date the client reaches 18 years of age.
- Records may be retained in either a written or an electronic format.

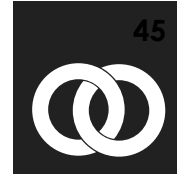
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Recordkeeping

- This law applies only to the records of a client whose therapy terminated on or after January 1, 2015.
- Be aware: CAMFT actually recommends that you keep your clinical records for 10 years from the date the therapy is terminated or – in the case of minors - 10 years from the date the client reaches 18 years of age because that is how the long the Board of Behavioral Sciences has to investigate certain complaints against you.

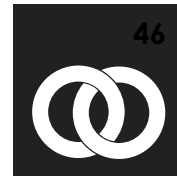
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Recordkeeping

- Distinguishing progress notes from "psychotherapy notes" under HIPAA:
 - The HIPAA final privacy rule created a special category of documentation entitled "psychotherapy notes."
 - These are "notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record."

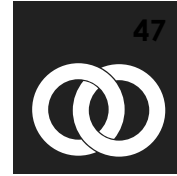
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Recordkeeping

- HIPAA Psychotherapy Notes:
 - "Psychotherapy notes" under HIPPA exclude: "... Medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms prognosis, and progress to date."
 - This means as long as psychotherapy notes do not contain the aforementioned excluded content, and they are separated from the rest of the client's clinical record, they are not considered to be part of the record.

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Important Considerations

- Therapists should consider the following questions when planning to provide school-based mental health services:
 - In what form will he/she be storing patient records (i.e. electronic storage, hard copy storage, etc.)?
 - If records are to be stored electronically, what type of password protection and back-up system will be used? How often will the system be backed up? Where will the backed-up version be stored? How often, if ever, will hard copies be printed?

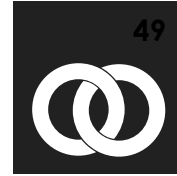
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Important Considerations

- If records will be maintained in hard copy, will they be stored in a locked cabinet? Are there procedures in place which prevent the unauthorized access to confidential treatment records? Are protective measures in place? For example, under what circumstances will file cabinets containing confidential information be left unlocked? Will the door to the room where the records are stored be locked?
- Who, specifically, will have access to the treatment records and under what circumstances?

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Important Considerations

- If records are being physically stored at the school site, who will be responsible for the records if the treating therapist is no longer providing services at that school?
- It should be noted that records shouldn't be left unprotected or stored in a manner which permits unauthorized access to the patient's confidential health information. In circumstances where the therapist is an "outside" provider, it is customary for him or her to maintain physical possession of the record at his or her office.

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Common Scenario

- How might a therapist respond if he or she is asked to store counseling records in a database or record storage system which is utilized to store and maintain education records?
 - Intend to make client treatment record part of the education record?
 - Record kept in sole possession, not accessible

Articles to Read

- *On Writing Progress Notes*
- *Closing a Psychotherapy Practice*
- *Retaining Clinical Records: Problems and Considerations*
- *Patient Access to Records*
- *New Law Affects MFTs Ability to Release Outpatient Psychotherapy Records*
- *What About Recordkeeping*



Requests for Behavioral Health Records and Information



Access to Student Info. & Records



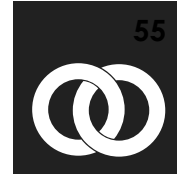
- Family Educational Rights and Privacy Act (FERPA)
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- CA laws
- Ethical Codes

Which law/laws and/or ethical standards apply?



- Depends on how a school counseling program is structured
 - What services will be provided? (i.e. academic, career, psychoeducational? Is there a therapeutic/behavioral health services component?)
 - Who will have access to counseling information and records?
 - How will counseling records be stored?
- Professionals working in schools must follow all applicable laws and ethical standards.
 - When state law provides greater confidentiality protection than federal law, providers must follow state law.

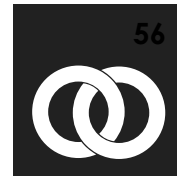
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Overview of FERPA

- FERPA is a federal law that protects the privacy of students' "education records" and parents' rights or students' rights to access that specific type of record.
- FERPA applies to all education records which are created and maintained by schools, whether public or private, that receive funds under the programs of the U.S. Department of Education.

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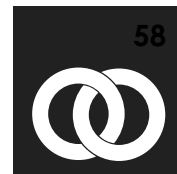
Overview of FERPA

- Education records are defined as records that
 - 1) Are directly related to the student AND
 - 2) Are maintained by an educational agency or institution OR by a party acting on behalf of the agency of institution



Overview of FERPA

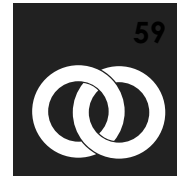
- An important exception to the education records definition:
 - FERPA law EXCLUDES records which are
 - Kept in the **sole possession** of the maker **AND**
 - **Are not accessible** or revealed to any other person, except a temporary substitute for the maker of the record.



Overview of FERPA

- What does this mean in the context of day-to-day practice?
 - The recordkeeping practices of school-based counselors, and any policies/procedures related to access of students' counseling records, determines whether those records are education records and subject to FERPA.

Access to Records Under FERPA



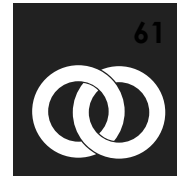
- Under FERPA, parents have the right to inspect their children's education records.
- Once a student reaches the age of 18, that right to inspect transfers to the student.
- Under the law, parents, or students who have reached the age of majority, may request to have education records amended.
- The law DOES NOT require schools to provide copies of the education records, unless it is impossible for the parents or students to inspect the records.

Access to Records Under FERPA



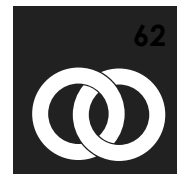
- Records which fall under the definition of education records generally should not be released without the written consent of a parent or the of-age student.

Access to Records Under FERPA



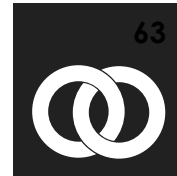
- Exceptions to the need for written consent to release education records:
 - When school officials have a legitimate education interest (34 CFR §99.31(a)(1))
 - School officials include teachers, principals, presidents, chancellors, board members, trustees, registrars, counselors, admissions officers, attorneys, accountants, human resources professionals, information systems specialists, support or clerical personnel

Access to Records Under FERPA



- The term "legitimate educational interest" generally refers to the right of certain school officials to access student information and records for the following purposes:
 - Serving a student
 - Protecting the health, safety, and learning of the student and others
 - Maintaining operations of the school district
 - Obtaining payment for educational programs and services

Access to Records Under FERPA

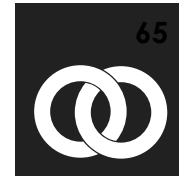


- Exceptions to the need for written consent to release education records continued:
 - FERPA allows for unauthorized disclosures in emergencies.
 - FERPA permits the disclosure of education records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals (34 CFR §§ 99.31 (a)(10) and 99.36).
 - School officials are not required to collect evidence of an articulable and significant threat before contacting those who can intervene to protect.

Access to Records Under FERPA



- Exceptions to the need for written consent to release education records continued:
 - More about the emergency exception
 - Emergency disclosures may be made to law enforcement, family members, the target of the threat or others the school counselor believes can mitigate the threat.
 - This exception is limited to the time of the emergency.



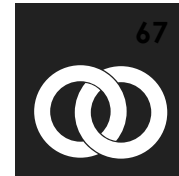
Overview of HIPAA

- "HIPAA" stands for the Health Insurance Portability and Accountability Act of 1996
- HIPAA is a federal law that protects the privacy of clients' health information.
- HIPAA only applies to the practices of health care providers (including psychotherapists) who transmit health information, in electronic form, to other covered entities such as health plans, insurance billers, and other covered health care providers.



Overview of HIPAA

- What is a covered entity?
- **Covered Entities**
 - 3 Types: 1) health plans, 2) health care clearinghouses, and 3) health care providers who transmit health information in electronic form in connection with certain administrative and financial transactions.
 - Three sub-questions: 1) are you a health care provider? (2) do you transmit information electronically? and, (3) do you conduct covered transactions?



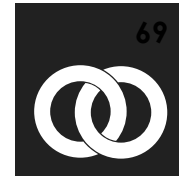
Overview of HIPAA

- For you to be a covered entity, you must answer **yes** to all of those questions or someone, such as a billing service, must conduct these transactions electronically on your behalf.
- If you only answer yes to one or two of them, or if you do not employ someone to conduct the covered transactions on your behalf, then you are not a covered entity and HIPAA does not apply to you.



Overview of HIPAA

- **Are You a Health Care Provider?**
A "health care provider" is any person who furnishes, bills, or is paid for health care in the regular course of their business. Included within the definition of health care is rendering counseling for mental conditions.
- Consequently, marriage and family therapists, interns and trainees are health care providers within the meaning of HIPAA.



Overview of HIPAA

■ Do You Transmit Information Electronically?

- Transmitting information electronically means to use computer-based technology to transmit and store health information.
- For instance, using the Internet, an Extranet, leased lines, dial-up lines, private networks and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media come within the meaning of the definition.



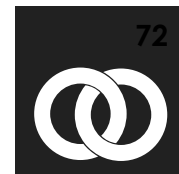
Overview of HIPAA

- Since the majority of you do not utilize Extranets, leased lines, dial-up lines, or private networks, the question here really is: Do you use the Internet to transmit information?
- We are not concerned with the transmission of just any information.
- In order to be subject to HIPAA, you must be transmitting "special" information to specific parties. This "special" information is information used when conducting one of HIPAA's covered transactions.



Overview of HIPAA

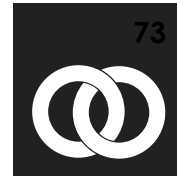
- What about faxing information to other covered entities? Does doing so make you a covered entity?
- No! Faxing information to other covered entities, from a stand-alone fax machine, does not make someone a covered entity for HIPAA's purposes.
- However, if you fax information from your computer, such activity would bring you under HIPAA's jurisdiction.



Overview of HIPAA

- **Do You Conduct Covered Transactions?**
 - A covered transaction for HIPAA's purposes involves transmitting information between covered entities to carry out certain financial or administrative activities related to health care.

Overview of HIPAA – Covered Transactions



- A request to obtain payment from a health plan for the rendering of health care to one of your patients, and any necessary accompanying information regarding the health care;
- An inquiry regarding a patient's eligibility, coverage, or benefits under a health plan, and a response from a health plan to you about such issues;
- A request that treatment or a referral be authorized, and a response to such a request;
- An inquiry regarding the status of a health care claim made by you, and a response about the status of such a claim;

Overview of HIPAA – Covered Transactions



- Transmission of subscriber (patient) information to a health plan to establish or terminate insurance coverage;
- Transmission of the following information from a health plan to a health care provider's financial institution: payment, information about the transfer of funds, or payment processing information. Or, transmission of the following information from a health plan to a health care provider: explanation of benefits information or remittance advice;
- Conducting health plan premium payment transactions (typically not done by health care providers); and,
- Transmission of claim or payment information to a health plan for the purpose of determining the relative payment responsibilities of such plan for health care (coordination of benefits).

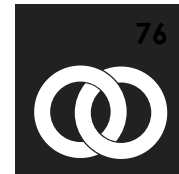
Overview of HIPAA



- **Who Isn't a Covered Entity?**

If you do not accept any forms of insurance (i.e., you accept only cash paying patients) or if you submit your insurance claims by mail or fax, or if you give the insurance forms to your patients so that they can mail or fax the forms to their carriers, you are not a "covered entity" and you do not have to comply with HIPAA, unless you choose to do so.

Overview of HIPAA



- FERPA & HIPAA cannot apply to the same information at the same time (i.e. If you and your practices are subject to FERPA law, you and your practices cannot be subject to HIPAA law).
- HIPAA explicitly states that its rules DO NOT APPLY to health information held in an education record subject to FERPA.



Overview of HIPAA

- Generally, information protected by HIPAA cannot be disclosed without a signed authorization.
- There are exceptions to this general rule.



FERPA vs. HIPAA

- Both protect the privacy of personal information
- Both generally require a signed authorization before records can be released
 - Both laws contain exceptions that allow personal information to be shared without a signed release



FERPA vs. HIPAA

Who may sign release of records?

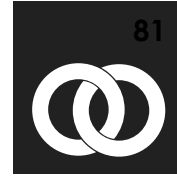
- Under FERPA, a parent must sign the release
- Under HIPAA, a parent must sign for a minor, UNLESS the minor consented or could have consented under state law.



FERPA vs. HIPAA

- Parents' right to access records
 - FERPA: Parents may access all of their children's education records
 - HIPAA: Parents may not access all of their children's health records
 - Providers can refuse to give parents access to their children's record if the provider determines parent access would have a detrimental effect on the minor's physical safety, psychological well-being or the provider's relationship with the minor
 - Providers can refuse to allow parents access to records that relate to health care for which the minor consented or could have consented

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FERPA vs. HIPAA

- Exchange of Information
 - A provider whose records are subject to FERPA can share information with any school staff who have a legitimate educational interest; Permitted to disclose information in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
 - The HIPAA Privacy Rule permits a covered entity to disclose PHI when the covered entity has a good faith belief that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others and the disclosure is made to persons reasonably able to prevent or lessen the threat.

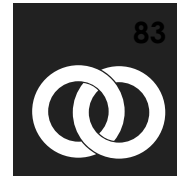
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FERPA vs. HIPAA

- Exchanges of Information:
 - Under FERPA, students' treatment records may be shared with health care providers who are treating them. This includes providers who are not employees of, or acting on behalf of, the school, if the information is released for the purpose of offering treatment.
 - A provider subject to HIPAA may disclose information to any other health provider working with students for purposes of treatment and referral, including professionals who are working outside of the school without a signed release.

CA Law



- Minors & Confidentiality
 - Under CA law, the "Confidentiality of Medical Information Act" (CA Civil Code §56.10) states: "A provider shall not disclose medical information regarding a patient."
 - A minor who is a patient has an expectation of privacy in his or her communications with a mental health provider.

CA Law



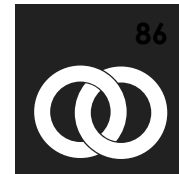
- In the absence of a legally mandated or permissible disclosure, a therapist may not reveal the specific content of his or her communications with a minor client.
- Examples of legally mandated or permissible disclosures
 - Instances of suspected child abuse and/or neglect
 - Circumstances involving imminent danger to self or others

CA Law



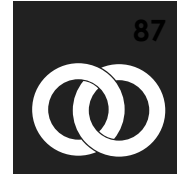
- Permissible disclosures
 - Sharing of confidential information with an insurer or other person responsible for paying for services rendered to the client/patient
 - Communications between licensed health care professionals for purposes of diagnosis or treatment of a patient (CA Civ. Code §56.10).

CA Law



- CA Civ. Code §56.103(e)(1):
 - If a health care provider determines that the disclosure of medical information concerning the diagnosis and treatment of a mental health condition of a minor is reasonably necessary for the purpose of assisting in coordinating the treatment and care of the minor, that information may be disclosed to a county social worker, probation officer, or any other person who is legally authorized to have custody or care of the minor.

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CA Law

- CA Civ. Code §56.103(e)(1):
 - Social workers, probation officers, and Care Custodians will likely want information about a minor's mental health condition, but the statute clearly gives health care providers the authority to determine whether information concerning the minor's mental health is reasonably necessary to assist in coordinating the minor's treatment and care.
 - It is the provider's call to make, not the social worker's, the probation officer's, or the Care Custodian's.

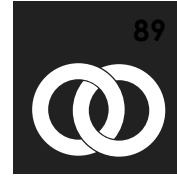
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CA Law

- CA Civ. Code §56.103(e)(1):
 - Care Custodian: Anyone with custody of a minor or anyone exercising care of a minor would qualify.
 - Before disclosing information to anyone claiming to have custody or care of a minor, verify such arrangement by examining applicable paperwork. Include a copy of the paperwork in the minor's file.
 - Ask: By what legal authority do you have custody of the minor? By what legal authority do you have care of the minor?

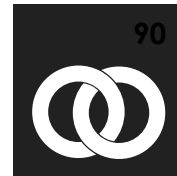
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CA Law

- CA Civ. Code §56.103(e)(1):
 - The statute allows, but does not mandate, information to flow to assist in coordinating the treatment and care of the minor.
 - Key questions to consider regarding whether the information should flow are:
 - How would the diagnosis and treatment information concerning the minor and his mental health condition assist in coordinating the minor's treatment?
 - How would such information assist in coordinating the minor's care?

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CA Law & Ethical Standards

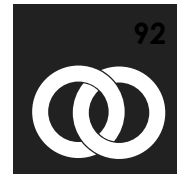
- Release of Treatment Records
 - Under CA Civ. Code §56.10 a health care provider may not generally disclose records regarding a patient without first obtaining an authorization
 - The CAMFT Code of Ethics Section 2.1 prohibits therapists from releasing confidential information without an authorization unless mandated or permitted by law

CA Law



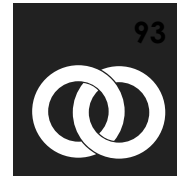
- Right of Access to Records
 - A client/patient who consented to his or her health care has a right of access to the health care record (Health & Safety Code §123100)
 - Parents and guardians generally have a right to access their children's health records, so long as the records do not pertain to treatment for which the minor provided consent.

CA Law



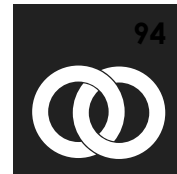
- Under Health & Safety Code §123115, a provider may decline to provide access to the minor's records under the following circumstances:
 - The minor actually provided consent OR
 - When the health care provider determines that access to the client/patient's record would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being.

CA Law



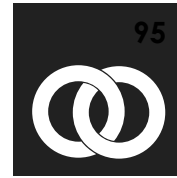
- Health & Safety Code §123115
- The term “health care provider” as it relates to §123115 of the Health and Safety Code includes licensed psychologists, licensed marriage and family therapists, and licensed clinical social workers, but **does not include school counselors or school psychologists.**
- Therefore, the **Health and Safety Code** is applicable to school counselors who hold one of the above-mentioned licenses and are working in a therapeutic capacity, but is **not applicable to unlicensed school counselors or licensed school counselors not working in a therapeutic capacity.**

CA Law



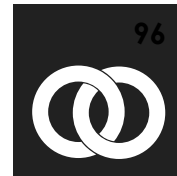
- CA law provides that some school counseling records are confidential, meaning they are not to be included within the definition of “education records.”
- For example, any information of a personal nature disclosed by a student, or parent or guardian of a student 12 years of age or older, in the process of receiving counseling from a school counselor is considered confidential and should not be included in an education record.

CA Law



- Furthermore, information of a personal nature disclosed by a student, or parent or guardian of a student 12 years of age or older while receiving counseling from a school counselor cannot become a part of the education record without written consent of the person who disclosed the confidential information.

CA Law



- Definition of education records under CA law:
 - An "education record" is any item of information directly related to an identifiable student, other than directory information, maintained by a school district or required to be maintained by an employee in the performance of his/her duties whether recorded by handwriting, print, tape, film, microfilm, or other means.
 - Under the CA Education Code, an "education record" **DOES NOT INCLUDE** informal notes, related to a student and compiled by a school officer or employee which remain in the sole possession of the maker **and are not accessible** by or revealed to any other person.

CA Law

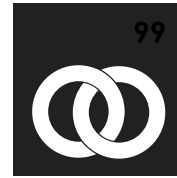


- Education Code and permissible disclosures:
 - Discussions with other health care providers for the sole purpose of referring the student for treatment;
 - Reporting information to the principal or parents of the student when the school counselor has reasonable cause to believe disclosure is necessary to avert a clear and present danger to the health, safety, or welfare of the student or other persons living in the school community;
 - Reporting information to the principal, other persons inside the school, the parents, and other persons outside the school when the student indicates that a crime, involving the likelihood of personal injury or significant or substantial property loss, will be or has been committed;

CA Law



- Education Code and permissible disclosures:
 - Conferring with other school staff, as appropriate, regarding modification of the student's academic program; reporting child abuse or neglect as mandated by law; and
 - Disclosing information to law enforcement agencies when ordered to do so by a court of law, to aid in the investigation of a crime, or when ordered to testify in any administrative or judicial proceeding.



What to Do About Conflicts

- There will be times when your duties as an employee of the school district and applicable laws conflict with the laws and ethical standards that pertain to your profession.
- What can you/do you do?
 - Be proactive (carefully review your job description and your employee handbook; address any conflicts when you become aware of them)
 - Consult with your school's district attorney
 - Call your malpractice insurance



Common Scenario

- How might a therapist respond if a member of the school staff or administration requests **information** regarding the treatment of a minor?
 - Information about student's treatment is confidential, unless subject to an exception under applicable laws or the therapist has written authorization to release information.
 - FERPA: Has record been handled/treated as education record; Is there a legitimate educational interest; Is there an emergency?
 - HIPAA: Is school/therapist a covered entity; Is there good faith belief disclosure necessary to prevent or lessen a serious threat and is school staff reasonably able to prevent or lessen the threat?
 - CA Law: CA Civ Code §56.10 uses similar language as HIPAA re: dangerous patient situation; Under Ed Code Is there a clear and present danger or a crime involving likelihood of injury; Is school staff asking for purposes of making child abuse/neglect report?

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Common Scenario

- How might a therapist respond if a member of the school staff or administration asks to see a copy of the **client's treatment records**?
 - The therapist would not be permitted to release records unless the release was legally permitted or the therapist has written authorization to release information.
 - FERPA: Has record been handled/treated as education record; Is there a legitimate educational interest; Is there an emergency?
 - HIPAA: Is school/therapist a covered entity; Is there good faith belief disclosure necessary to prevent or lessen a serious threat and is school staff reasonably able to prevent or lessen the threat?
 - CA Law: Some school counseling records are confidential; information shared by student 12 years of age or older excluded from education record; Is there good faith belief disclosure necessary to prevent or lessen a serious threat and is school staff reasonably able to prevent or lessen the threat?

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Common Scenario

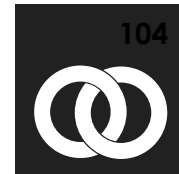
- How might a therapist respond if an IEP team requests information relevant to a student's progress in therapy?
 - Assessment to identify child's needs and determine whether the child qualifies for special education resources.
 - The assessment may be shared with the IEP team
 - However, IEP team members are not privy to all of the details of a child's confidential behavioral health treatment and do not have an automatic right to access the record.
 - Education Code discusses conferring with school staff regarding modification of student's academic program
 - If necessary to share information consider obtaining written permission
 - FERPA: Has record been handled/treated as education record; Is there a legitimate educational interest (i.e. serve student)?

Applying the Law



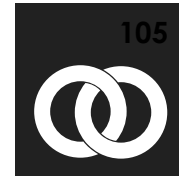
- Scenario 1: You have been working with a student who alleges her father is molesting her. You've made a CPS report and the allegation is currently being investigated. Father calls you and requests a copy of the student's clinical record.

Applying the Law



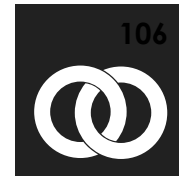
- Scenario 2: You are the supervisor of a Registered Intern working in a school setting. The psychiatrist of the student your Registered Intern is counseling calls to discuss the student's treatment.

Articles to Read



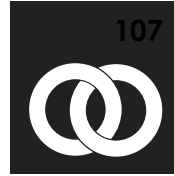
- *MFTS as School Counselors: Confidentiality and Privilege*
- *LMFTS as School Counselors*
- *Minors the System of Flow of Information and Mud in the Middle*
- *Confidentiality and its Exceptions*
- *Preserving the Confidentiality of Patient Records*
- *Authorization to Release Information*
- *Confidentiality*

Confidentiality vs. Privilege



- It's important to understand each concept and when either confidentiality, privilege or an exception applies.

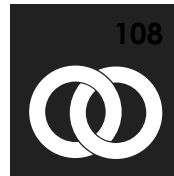
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Confidentiality vs. Privilege

- Confidentiality is a restriction on the volunteering of information to any third party.
- The concept of privilege involves the right to withhold information in a legal proceeding.
- Practice Tip:
 - An informal request for information and/or records means you are dealing with an issue of confidentiality and the rules related to confidentiality apply.
 - A formal request for information and/or records (i.e. service of a subpoena) means you are dealing with an issue of privilege and the rules related to privilege apply.

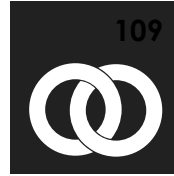
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Confidentiality

- Under the CA Education Code §49602:
 - School Counselors are permitted to withhold confidential information from the parents of a student when the school counselor has reasonable cause to believe the disclosure would result in a clear and present danger to the health, safety, or welfare of the student.

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Confidentiality

- Therapists should generally err on the side of caution by protecting client confidentiality.
- Complaints are rarely filed against therapists who refuse to release confidential information, but are often filed against therapists who release confidential information when they should not have.
- In fact, with regard to school counseling information of a personal nature, the Education Code provides that school counselors treating students 12 years of age or older shall not incur any civil or criminal liability as a result of keeping the information confidential.

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Privilege

- Privilege involves the right to records or information/testimony in a legal proceeding.



Privilege

- Psychotherapist-Patient Privilege (Cal. Evidence Code Code §1014):
 - Absent a waiver of the privilege, or an applicable exception to privilege, **a client/patient has a privilege to refuse to disclose, and to prevent others from disclosing**, a confidential communication between client/patient and psychotherapist.



CA Law

- Psychotherapist-Patient Privilege
 - A minor patient may be the holder of the privilege in certain circumstances (consented to treatment).
 - A guardian ad-litem and/or minor's counsel has the legal authority to assert or waive privilege on behalf of a minor.
 - In cases where the court does not find the parents' interests to be in conflict with the minor's interests, parents may be appointed to serve as the minor's guardian ad litem.

CA Law



- Psychotherapist-Patient Privilege
 - A confidential communication between a client/patient and his or her psychotherapist, including the diagnosis made and any advice given to the client/patient is protected from disclosure (Evidence Code §1010).
 - The psychotherapist who received or made a communication subject to the privilege must claim the privilege on behalf of the holder of the privilege (the client/patient), when the confidential communication is sought to be disclosed, unless he or she is authorized to release the confidential information being sought.

Privilege



- The issue of minors and privilege is complex.
- The CAMFT Code of Ethics, specifically provision 8.6, reflects this complexity by encouraging members to **confirm who the holder of privilege is in a legal proceeding.**

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Privilege

- To address an issue of minors and privilege, a therapist also needs to **consider the type of legal proceeding** involved because different courts have different rules regarding minors and decision-making authority.
 - Civil Lawsuit Filed in Superior Court
 - Family Court Custody Proceeding
 - Juvenile Court Dependency Proceeding

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Privilege

- Civil lawsuit filed in Superior Court
 - In general, minors do not have the right to sue so litigation involving a minor must be conducted through a guardian or a guardian ad litem ("G-AL").
 - Determine who is the minor's guardian or G-AL.
 - Obtain and review court order

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Privilege

- Family Court Custody or Visitation Proceeding
 - Has minor's counsel been appointed?
 - Ask for copy of the court order.
 - Minor's counsel is expressly authorized by statute to assert or waive privilege on behalf of the child.
 - Judges may allow parents to waive privilege on behalf of their minor children when there are no conflicts of interests between parents and the children (typical only where both parents agree on waiving the privilege).
 - Judges may allow minors themselves to waive their own privilege if 12 years of age or older.

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Privilege

- Juvenile Dependency Court Proceeding
 - Minor can waive his or her own privilege if the court finds the minor to be of sufficient age and maturity.
 - Sufficiency is presumed by the court if the minor is 12 years of age or older.
 - Consider inquiring whether the court has found or presumed the minor to be of sufficient age and maturity.
 - If the minor patient asserts privilege, the minor's counsel may not waive it.
 - If the minor's counsel asserts privilege, the minor may waive it.
 - If the minor is not of sufficient age and maturity, minor's counsel can assert or waive privilege for the minor.

Privilege



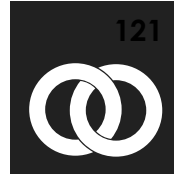
- MFTs fall within the definition of a “psychotherapist” while school counselors do not.
- The psychotherapist-patient privilege is applicable only to school counselors who are also psychotherapists and working in a therapeutic capacity.

What to consider if you receive a subpoena



- Consider whether minor consented to counseling.
- If minor consented, consult with minor about whether waiving privilege.
- If minor could not or did not consent, find out if client is represented by an attorney or if a guardian ad litem has been appointed and consult with representative.
- If waiving, get written release of information.
- If cannot reach client or client's counsel or guardian ad litem, assert privilege.

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Subpoena vs. Court Order

- A subpoena is different from a court order.
- A subpoena is a formal legal request for information but is not an order for you to turn over your client's records.
- When receive subpoena, confirm who holds the privilege for the minor.
 - A minor who consented to his or her own treatment
 - A minor's counsel
 - A guardian ad litem/parent
- If you receive a court order from a judge that specifically directs you to turn over records or to testify, you must comply with the court order.

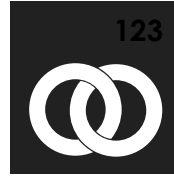
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Authorization to Release

- Handwritten or typed (14 point)
- Signed and Dated
- Uses and limits of medical information
- Name or function of provider releasing
- Name or function of entity receiving
- Date authorization expires

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Common Scenario

- How might a therapist respond if he or she receives a subpoena/and or court order for the treatment record?
 - Depends on facts and circumstances
 - Custodian of record is responsible for responding
 - Since some schools may want to involve school's legal counsel, may be good idea to consult school district's legal counsel if the custodian of the record is an employee of the school district

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Suicidal Patients

- You **may disclose** medical information if you have good faith belief the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. Civil Code §56.10
- Note: An exception to the psychotherapist-patient privilege is if you have reasonable cause to believe the patient is in such mental or emotional condition as to be dangerous to himself or to the person of another and that disclosure of the communication is necessary to prevent the threatened danger. Evidence Code § 1024

Homicidal/Dangerous Patients



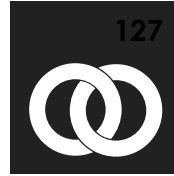
- You **may disclose** medical information if you have good faith belief the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. Civil Code § 56.10
- Note: An exception to the psychotherapist-patient privilege is if you have reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person of another and that disclosure of the communication is necessary to prevent the threatened danger. Evid Code § 1024

The Tarasoff Two-Step



- Step 1: Assess, Assess, Assess
 - As you work with a client, you may become privy to information that makes you concerned, or should make you concerned, that your client may kill or physically injure another human being.
 - Perhaps the client has threatened to kill his teacher because the client thought the teacher made him look dumb in class.
 - Perhaps the client has a history of beating up his little sister at home and there are signs that his temper may make him dangerous to other kids.

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The Tarasoff Two-Step

- What do you do?
 - Conduct a thorough **assessment** of the individual and his or her situation
 - Determine whether you reasonably believe there is a serious risk of loss of life or grave bodily injury to another person.

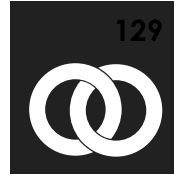
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The Tarasoff Two-Step

- Concepts that relate to dangerousness:
 - The concept of "loss of life" is self-evident.
 - The concept of grave bodily injury includes such injuries as **loss of consciousness, concussions, fractures, wounds requiring extensive suturing, loss or impairment of bodily members or organs, and serious disfigurement.**
 - We're going to use the generic term violence as shorthand for the concept of loss of life and grave bodily injury.

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The Tarasoff Two-Step

- Assess to clarify what you believe about the patient's capacity for committing violence.
- Assessing for the likelihood of violence is different from predicting that violence will occur.
- The law does not expect you to predict future violence with one-hundred percent accuracy.
- Rather, the law expects you to assess for the likelihood of violence by utilizing your education, training, and experience.

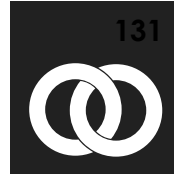
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The Tarasoff Two-Step

- Not perfect, reasonably competent
- Apply your education, training, and experience to the facts of the patient's situation.
- Use an assessment tool that has been generally recognized by the psychotherapy community.
 - This includes assessment devices published in textbooks, practice handbooks, peer-reviewed articles, and information acquired from continuing education course instructors.

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The Tarasoff Two-Step

- Assessment Goal:
 - Whatever standardized assessment tool you utilize, the goal is to **arrive at a reasoned and informed judgment about your patient's capacity for committing violence.**
 - You must have good reasons for the judgments you make, and your **records must reflect those reasons and judgments.**
 - Ultimately, those reasons and judgments will come from understanding your patient, human behavior, and the factors that can lead to violence.

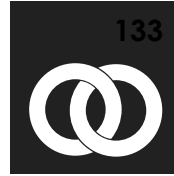
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The Tarasoff Two-Step

- Step 2: Discharging the Duty to Protect
 - If you believe your client is going to commit a serious act of violence, you have a duty to attempt to protect and you need to take action in light of that duty.
 - Options for Action
 - If your patient communicates to you a serious threat of physical violence against a reasonably identifiable victim or victims, and you reasonably believe your patient is likely to commit such violence after assessing for it, you should **make reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.**
 - This = immunity from liability under the Tarasoff statute if your patient actually harms such victims.

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The Tarasoff Two-Step

- You can hospitalize your patient.
 - This WILL NOT get you immunity from liability under the Tarasoff Statute, but would be a reasonable measure to discharge the duty to protect under the Tarasoff case.
 - Instead of having immunity from liability, your defense would be that you met the standard of care by doing something reasonable under the circumstances to protect the intended victim.

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Interpretation of W&I Code §§8100 & 8105

- “A licensed psychotherapist shall report to a local law enforcement agency, within 24 hours...the identity of a person subject to subdivision (b) of Section 8100...”
- 8100(b)—“...if [a patient] communicates to a licensed psychotherapist...a **serious threat of physical violence against a reasonably identifiable victim or victims.**”

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What Now?

- “Communicates”—what if therapist determines?
- “Patient”—what if family member?
- “Licensed”—who owns the patient?
- CYA

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Dangerous Patients

YOUR PATIENT

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Common Scenario

- How might a therapist respond if a student communicates a threat of violence to himself/herself during a counseling session?
 - Conduct an assessment for dangerousness
 - May have a duty to take reasonable steps to attempt to protect
 - When client is suicidal, a provider may decide to notify parents, school officials or anyone provider believes may be able to prevent or lessen the threat (FERPA, HIPAA, CA Law).

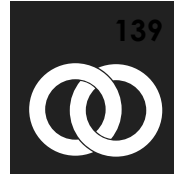
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Common Scenario

- How might a therapist respond if a student communicates a threat of violence to others during a counseling session?
 - Conduct assessment for dangerousness
 - Tarasoff notification to police and identifiable victim(s) or 5150
 - A provider may decide to notify parents, school officials or anyone provider believes may be able to prevent or lessen the threat (FERPA, HIPAA, CA Law).

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Applying the Law

- Scenario 1: You have been seeing a troubled boy who has been dealing with school bullying. He has been absent from school for several days and has missed appointments with you. His best friend comes to you and says he is concerned about your client because your client talked about "hurting everyone" at the school while they were playing Gods of War last night. Analyze this first under Tarasoff and then under the Welfare & Institutions Code.

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Articles to Read

- *Tarasoff Two-Step*
- *The Dangerous Patient and Confidentiality Revisited*
- *Recent Rulings Shed Light on Tarasoff Warnings*
- *Patients Who are a Danger to Themselves or Others*
- *Legal Issues in Treating Suicidal Patients*
- *Suicidal Patients and Your Legal Duty*
- *Working with Suicidal Patients*
- *Your Duty to Report Serious Threats of Violence to the Police*

Reporting Child Abuse and Neglect



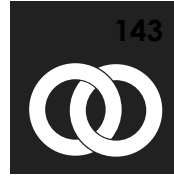
- The law requires certain parties, parties known as mandated reporters, to report known or suspected child abuse and neglect.
- Licensed Marriage and Family Therapists, Trainees and Interns are mandated reporters (California Penal Code §11165.7).

Child Abuse & Neglect



- Duties of a mandated reporter:
 - When in his or her professional capacity
 - Grocery store
 - Observes a child
 - Reasonably suspects
 - Based on facts, a reasonable person in a like position, would suspect same
 - 3rd Hand information

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Child Abuse & Neglect

- What to report:
 - Intentional physical injury/endangerment
 - Neglect: Negligent treatment or the maltreatment of a child by a person responsible for a child's welfare under circumstances indicating harm or threat of harm to a child's health or welfare.
 - Grey area...values
 - Sexual abuse and sexual exploitation
 - Sex exploitation includes preparing, selling, or distributing pornographic materials involving children, performances involving obscene sexual conduct and child prostitution
 - AB 1775

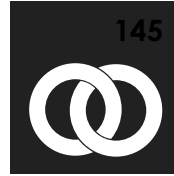
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Child Abuse & Neglect

- New clarification in the law per AB 1775:
- The language of the law required mandated reporters to report the following:
 - A person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies.

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Child Abuse & Neglect

- The change in the law, which went into effect on January 1st of 2015, requires mandated reporters to report the following:
 - A person who depicts a child in, or who knowingly develops, duplicates, prints, **downloads, streams, accesses through any electronic or digital media**, or exchanges, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies.

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Child Abuse & Neglect

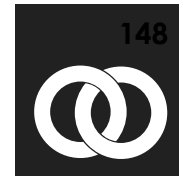
- May Report Provision of CANRA:
 - If MR reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self and others, **may** make a report (Penal Code §11166.05).

Child Abuse & Neglect



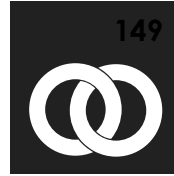
- Timeframe for Reporting
 - Report by phone ASAP
 - Fax a written follow-up report within 36 hours

Child Abuse & Neglect



- What if the abuse happened in the past?
 - If a victim is under age 18, the abuse must be reported.
 - Childhood abuse of adults should be reported if there is a reasonable suspicion that there may be another potential child victim or child endangerment.
 - Various opinions...

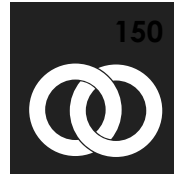
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Child Abuse & Neglect

- Reporting sexual activity between minors:
 - *Consensual Sex Between Minors: CAMFT Article*
 - *BBS Legal Memo re Consensual Sexual Activity*
 - *Sodomy and oral copulation*

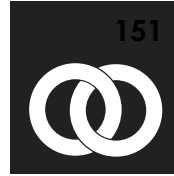
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Child Abuse & Neglect

- Historically, all sodomy, oral copulation, penetration of a genital or anal opening by a foreign object – even if consensual – with a partner of any age was a mandatory report.
- However on April 11, 2013, the BBS released an opinion on whether the CANRA statute requires practitioners to report all conduct by minors that fall under the definition of sodomy and oral copulation.

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Child Abuse & Neglect

- Legal Counsel for the BBS stated that court interpretations throughout the years confirmed that minors can lawfully engage in consensual sex with other **minors of like age**, without the necessity of a mandated report.
- Counsel further stated that while the cases cited did not directly discuss oral copulation and sodomy between minors, the **same reasoning applied** and that meant practitioners are not required to report all conduct by minors that fell under the definition of sodomy and oral copulation.

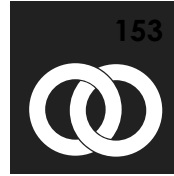
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Child Abuse & Neglect

- What does this mean for you?
 - When you learn of consensual, non-abusive sexual activity between two minors, you should do the following:
 - Use the chart in the CAMFT article.
 - If there is a mandatory report based on the ages for intercourse, you should make a report of any information related to oral copulation and sodomy.
 - If there is no mandatory report based on the ages – according to the BBS – there would be no report necessary in the case of oral copulation or sodomy.
 - Forced, coerced, and/or non-consensual activity is always a mandatory report.

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Child Abuse & Neglect

- It is important to note that the BBS's interpretation of law is just that – an interpretation.
- The BBS evaluation would be a good evidentiary resource in defense of a provider who is challenged in court for not making a report for consensual oral copulation and/or sodomy.
- However, the laws regarding mandatory reporting have not changed.
- Since state law has not changed and this exact issue has not been examined by the courts, the conservative approach would be to continue to report those types of consensual acts between minors.

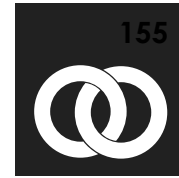
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Child Abuse & Neglect

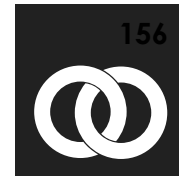
- Identity of the reporter:
 - The law requires agencies to keep your identity confidential.
 - Your identity may only be disclosed among agencies receiving or investigating mandated reports.
 - **If you are worried about your safety, remind the agency to whom you are reporting of the duty to keep your identity confidential.**
 - You are not required to inform a client that you made a report.
 - You may choose to share that information with them for clinical reasons.

Child Abuse & Neglect



- Duties of a mandated reporter:
 - Joint Knowledge – Who reports?
 - When two or more team members who are required to report have joint knowledge of a known or suspected instance of child abuse or neglect a single report may be made and only has to be signed by the team member who was designated to report.
 - Make sure it is reported
 - Err on the side of caution—does not include prior reports

Child Abuse & Neglect



- ***Note: You must make a report even if some of the information is not known or is uncertain.***
- ***You will not always have all of the information. Report what you have.***



Child Abuse & Neglect

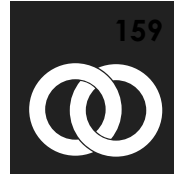
- Receivers of Mandated Reports (Penal Code §11165.9):
 - Reports may be made to ANY police department, sheriff's department or child protective services.
 - Agencies may not refuse to take reports and must maintain a record of all reports received.
 - If lack jurisdiction, unless can immediately transfer the call to an agency with proper jurisdiction, must take report.



Child Abuse & Neglect

- Mandated reporter immunity (Penal Code § 11172):
 - You cannot be held civilly or criminally liable for any report required or authorized by law.
 - The immunity applies even if you acquired the knowledge or reasonable suspicion of child abuse or neglect outside of your professional capacity or outside the scope of your employment.

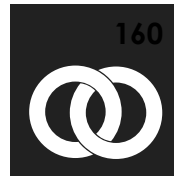
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Child Abuse & Neglect

- Important Reminders:
 - No supervisor or administrator may impede or inhibit a report or subject the reporting person to any sanction (Penal Code § 11166).
 - Generally speaking, CPS, law enforcement, DCFS workers are not equally trained in CA law and your mandated reporter requirements.
 - Your duty is not discharged simply because someone on the other end of the line told you they don't have jurisdiction or the facts of your case don't sound like something they would investigate.
 - If a receiver of mandated reports refuses to take a report, ask to speak to a supervisor or fax over a copy of the report.

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Common Scenario

- How might a therapist respond if a student shares information which leads the therapist to suspect abuse or neglect?
 - Purpose of CANRA statute is to protect children
 - Call as soon as practicably possible and follow-up with written report within 36 hours.
 - CANRA statute only permits therapist to share information related to incidents of abuse and/or neglect with receivers of the mandated reports.
 - Therapists who wish to share information with parents or school officials would generally need a legal defense (i.e. good faith belief disclosure necessary to prevent or lessen a serious and imminent threat to the health or safety of the student/patient) or a written authorization to release.



Applying the Law

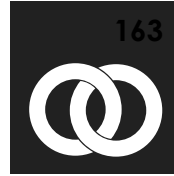
- Scenario 1: Linda (a 12-year-old) asked LMFT Mary if she could come in for therapy to discuss her parents' divorce. LMFT Mary decided that since Linda was over 12 she could consent for herself. In yesterday's session, Linda admitted that during times when she was extremely distraught about her parents' divorce, she had taken it out on her boyfriend, Bobby (a 17 year old). She told LMFT Mary that one time she even hit him with a baseball bat causing Bobby to blackout. Because Linda is only 12, LMFT Mary decided not to make a child abuse report.



Applying the Law

- Scenario 2: The parents and teacher of 16-year-old Sally are concerned about her lack of attendance and the impact that will have on her ability to graduate. After coming to see you for a few months, Sally reveals that she and her boyfriend, Johnny, have been skipping school to do marijuana. Occasionally, Johnny's older brother, Adam, also buys them alcohol. Sally also admits that she and Johnny have been having oral sex.

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Articles to Read

- *Immunity Under the Child Abuse Reporting Law*
- *A Mandated Reporter Equals a Mandatory Report*
- *Changes to Child Abuse and Neglect Reporting Act*
- *Guidelines on Reporting Child Abuse*
- *Reporting Child Abuse That Has Occurred Outside of CA*
- *Child Abuse and Neglect Reporting Act for 2001*
- *Child Abuse and Neglect Reporting Act: A Review of Key Definitions*

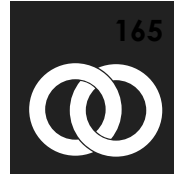
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Common Scenario

- How might a therapist respond if he or she is informed that there is no space available for the therapist to provide confidential counseling to students?
 - The space must accommodate two or more people who will be meeting for various lengths of time.
 - The room should offer comfort and privacy.

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Common Scenario

- How might a therapist respond if he or she is informed there is no space available to appropriately maintain confidential treatment records?
 - Therapists are required to protect the confidentiality of clients' treatment records.
 - The therapist must address the situation with school administration personnel to develop an appropriate solution which will permit the safe and secure storage of records.

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Questions?

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or
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