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Objectives

Upon completion of this course, learners will be able to:

1. State basic principles of ethics and their application to rehabilitation and therapy
2. Identify codes of ethics that govern OT practice
3. Describe ethics in healthcare and professional licensing including that which is considered unethical and/or unlawful by credentialing boards
4. Discuss procedures for analyzing ethical dilemmas in healthcare
Professional Ethics

- Incorporates values, principles and morals into professional decision making
- Professions try to instill their own values to avoid and prevent unwanted professional behaviors
- Utilize training and professional obligations as a source of ethical values
- Professional codes of ethics used to guide behavior

Codes of Ethics

- Incorporate sets of rules or principles intended to express the particular values of the profession as a whole
- Licensing boards/credentialing agencies incorporate professional codes of ethics into licensure regulations or credentialing rules
Codes of Ethics

- Promote basic tenets of a profession
- Codify fundamental beliefs of the professions and the common moral values the profession chooses to protect patients and clients from harm
- Meaning to the uniqueness of what therapists do
- Create a bond between professionals
- Provides the basis for the meaning of what it means to be a member of a particular profession
- Values to incorporate into moral and behavioral repertoire

Codes of Ethics

- Measure of proper professional behavior
- Standard of care to be rendered
- Rarely does a code of ethics provide an absolute guide to behavior/decision making
- Code is a starting place or point of reference
Occupational Therapy Code of Ethics

Core Values

- Core Values and Attitudes of Occupational Therapy Practice
  - Altruism
  - Equality
  - Freedom
  - Justice
  - Dignity
  - Truth
  - Prudence
Purpose

- Identify and describe principles supported by the occupational therapy profession
- Educate the general public and members regarding established principles
- Socialize occupational therapy personnel to expected standards of conduct
- Assist personnel in recognition and resolution of ethical dilemmas

Principle 1: Beneficence

Occupational therapy personnel shall demonstrate a concern for the well-being and safety of the recipients of their services
Principle 2: Nonmaleficence

Occupational therapy personnel shall intentionally refrain from actions that cause harm

Principle 3: Autonomy and Confidentiality

Occupational therapy personnel shall respect the right of the individual to self-determination
Principle 4: Social Justice

Occupational therapy personnel shall provide services in a fair and equitable manner.

Principle 5: Procedural Justice

Occupational therapy personnel shall comply with institutional rules, local, state, federal, and international laws and AOTA documents applicable to the profession of occupational therapy.
Principle 6: Veracity

Occupational therapy personnel shall provide comprehensive, accurate, and objective information when representing the profession.

Principle 7: Fidelity

Occupational therapy personnel shall treat colleagues and other professionals with respect, fairness, discretion, and integrity.
Informed Consent

- Present patients with details, benefits, risks and potential risks of proposed interventions
- Consent is based on specific information
- Consent relies on veracity -- obligation to speak and act truthfully

Duty

- Obligations to others in society
- Duties exist because of the nature of the relationship between the parties
Rights

- Ability to take advantage of a moral entitlement to do something or not to do something
- Patient’s Bill of Rights
- Federal statutes (e.g., HIPAA)
- Facility-specific bill of rights

Paternalism

- Failure to respect autonomy; acting with disregard to individual rights
- Substituting one’s beliefs, opinions, judgments for the patient’s
- Attempt to justify by claiming they acted in the person’s best interests
**Unethical Practice**

- Practice that does not comport to established professional standards
- Practice that ranges from unreasonable, unjustified and ineffective to immoral, questionable and knowingly harmful or wrong
- Unethical practice affects the patient, the therapist, the facility/company, insurance providers (e.g., Medicare), society, etc.

**Licensure**

- Standard of conduct for therapists
- States control licensure through laws and regulations
- Requirements vary from state to state
- Licensure laws prescribe the type of behavior therapists must follow
- Minimum standards for licensure and requirements to ensure competent practice
Licensure

- Penalties for those who participate in the behaviors they prohibit
- Disciplinary actions refer to the process of assigning penalties for unacceptable behaviors
- Penalties range from fines to suspension or revocation of a license
- Every practitioner should read their licensure law

Behaviors Subject to Disciplinary Action

- Abuse of drugs or alcohol
- Conviction of a felony
- Conviction of a crime of moral turpitude
- Conviction of a crime related to therapy practice
- Practicing without a prescription or referral
- Practicing outside the scope of one’s practice or using interventions for which one is not certified or trained
- Obtaining a license using fraud or deception
### Behaviors Subject to Disciplinary Action

- Gross negligence in practicing therapy
- Breaching patient confidentiality
- Failing to report a known violation of the licensure law by another licensee
- Making or filing false claims or reports
- Accepting kickbacks
- Exercising undue influence over patients
- Failing to maintain adequate records

### Behaviors Subject to Disciplinary Action

- Failing to provide adequate supervision
- Providing unnecessary services
- False, deceptive, misleading advertising
- Practicing under another name
- Failure to perform a legal obligation
- Practicing medicine when you are not a physician
### Behaviors Subject to Disciplinary Action

- Performing services not authorized
- Performing experimental services without informed consent
- Practicing beyond scope permitted
- Failure to comply with CE requirements
- Failure to notify the licensing board of an address change
- Inability to practice competently

### Abuse

- Other laws impose legal duties and obligations upon health care professionals
  - For example, reporting suspected abuse.
  - Legal requirement to report abuse is an exception to a confidentiality requirement
Fraud

- Often occurs in the context of billing/documentation
  - Billing for services never provided
  - Billing for more services than were provided
  - Billing for non-covered services
  - Backdating
  - Fabricating notes for visits never made

Medicare Fraud and Abuse

- Fraud: Provider of therapy services knowingly or willingly lies in order to get paid
- Abuse: Medicare pays for an item or service it should not or any time a provider bills Medicare for services not medically necessary
- Office of Inspector General (OIG) fights Medicare fraud and abuse through task forces and audits
- Failure to report illegal activity may result in federal criminal charges of conspiracy
Acts Prohibited by Medicare

- Making false claims for payment
- Making false statements for payment
- Billing for visits never made
- Billing for non-face-to-face therapy services
- Billing for one-to-one visit when group/concurrent therapy services were provided

Acts Prohibited by Medicare

- Billing for therapy services not provided by a licensed provider
- Billing for therapy codes that reimburse at a higher rate than the code provided
- Paying or receiving kickbacks for goods and services
- Soliciting for or paying/receiving payment for referrals
Malpractice

- Most claims surround negligence
- Negligence occurs when the therapist’s conduct falls below the acceptable standard of care
- Negligence concerns itself with conduct, not state of mind

Negligence

- Four elements
  - A relationship between the parties must exist that creates a duty to act in a particular way
  - Conduct fell below the professionally reasonable standard of care
  - The breach of the standard of care caused the damages suffered
  - Person must prove he/she suffered harm
Discrimination Laws

- Legal and ethical issues in relation to patient and student issues
- Cannot discriminate based on age, race, disability, religion, sexual orientation, etc.

Medicare

- Therapy caps
  - Exceptions process for medically necessary services
- Physician Fee Schedule
  - CPT codes/prices are adjusted annually
Medicare

- Concurrent Therapy
  - Treatment of 2 residents at the same time who are performing different tasks with different goals
  - Time allocated or split between the two residents
- Group Rules
  - Similar tasks/goals
  - Limited to 4 residents, up to 25% of the therapy time per week per discipline
  - Minutes allocated (divided by 4)
- Student Supervision
  - Individual therapy when only one resident is being treated by the therapy student and supervising therapist/assistant
  - No line of sight requirement

Common Ethical Issues

- Documentation lapses
- Employer demands
- Use and supervision of support personnel
- Impaired Practitioners
- Student supervision
Common Ethical Issues

Student Supervision

- Patient welfare must come first
- Cannot delegate clinical decision making
- Must inform client of qualifications/credentials
- Increase supervision based on knowledge, experience, competence
- Document amount of supervision
- Protect client confidentiality
- Unethical for therapists to sign for clinical hours they did not supervise

Common Ethical Issues

Confidentiality

- Records management, storage, ownership, retention
- Information exchanged
- Disclosure/release of information
- Access to records
- Exchange of records between professionals
Common Ethical Issues

Client Abandonment

Examples of misconduct

- Failing to give sufficient notice
- Failing to provide an interim plan
- Failing to complete paperwork
- Withholding paperwork
- Withholding paperwork
- Removing materials or records
- Maligning the facility or organization
- Recruiting clients

Common Ethical Issues

Reimbursement for Services

- Misrepresenting information to obtain reimbursement
  - Accurate documentation is required
  - Must remain current with payer policies
- Providing service when there is no reasonable expectation of significant benefit
  - Cannot provide services when the prognosis is too poor to justify therapy
  - Cannot exaggerate extent of improvement to obtain reimbursement
Common Ethical Issues
Reimbursement for Services

- Scheduling services not reasonably necessary
  - Must be based on clinical need
- Providing more hours of care than can be justified
  - Must be based on clinical need
- Providing complimentary care or discounted care
  - Fee alterations are not provided based on referral sources or personal relationships

Keep in Mind

- Ethical issues are the same regardless of payer
- Consider evidence-based practices
- Document quantifiable and measurable changes
- Follow best clinical judgment
- Present information accurately
Analyzing Ethical Dilemmas

- Multi-step process
- Guided by different sets of values
- Methods for analysis
  - RIPS
  - Rest’s 4 Component
  - CELIBATE method
    - Clinical Ethics and Legal Issues Bait All Therapists Equally
- Considers both legal and ethical issues

RIPS Model

- Step 1: Recognize and Define the Ethical Issue
  - Realm
  - Individual process
  - Implications for action
  - Type of ethical situation
  - Barriers
RIPS Model

Components of the RIPS Model

<table>
<thead>
<tr>
<th>Realm</th>
<th>Individual Process</th>
<th>Ethical Situation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual (relationship</td>
<td>Moral Sensitivity (recognize situation)</td>
<td>Issue or Problem (values are challenged)</td>
</tr>
<tr>
<td>between individuals)</td>
<td>Moral Judgment (right or wrong)</td>
<td>Dilemma (right vs right decision)</td>
</tr>
<tr>
<td>Organizational/</td>
<td>Moral Motivation (moral values above</td>
<td>Distress (right course of action blocked by a barrier)</td>
</tr>
<tr>
<td>Institutional (good of the</td>
<td>other values)</td>
<td>Temptation (right vs wrong situation)</td>
</tr>
<tr>
<td>organization)</td>
<td>Moral Courage (implement action)</td>
<td>Silence (values are challenged but no one is addressing it)</td>
</tr>
<tr>
<td>Societal (common good)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

RIPS Model

- Step 2: Reflect
  - Background
  - Major stakeholders
  - Consequences of action or inaction
  - Laws broken?
  - Professional guidance
  - Right-versus wrong tests
RIPS Model

- Step 3: Decide the Right Thing to Do
- Step 4: Implement, Evaluate, and Assess Needed Changes to Prevent Recurrence

Rest’s 4-Component Model

- Moral Sensitivity
- Moral Judgment
- Moral Motivation
- Moral Action
Moral Sensitivity

- Recognition that an ethical dilemma exists
- Ability to empathize with others
- Be aware of how one’s actions affect other people
- Recognize values, beliefs, understandings and obligations of others
- Appropriate emotional response
- Impact of actions on others
- Discern relevant aspects of the situation
- Consider other aspects such as care

Moral Judgment

- Judging which action is most ethically justifiable for a moral dilemma
- Identify the morally relevant aspects of the situation
- Weighs significance of aspects
- Identify potential actions and consequences
- Clarifying factual, conceptual and ethical issues
Moral Motivation

- Whether the practitioner is motivated to enact the moral decision made
- Internal or external barriers can undermine motivation
- Requires clarity, courage, support, skillful advocacy and a willingness to subordinate other important commitments
- Wisdom and virtue as essential elements

Moral Action

- Executing and implementing a plan with perseverance and resoluteness
- Consider the best way to implement the decision
- Requires diplomacy, skilled communication, collaboration and strategic planning
- Create a trustworthy process with clear expectations, fair processes and precise communication
- Attention to objections/resistance
CELIBATE

1. What is the problem?
2. What are the facts of the situation?
3. Who are the interested parties?
   - Facility
   - Patient
   - Other therapists
   - Observers
   - Payers
   - Others
4. What is the nature of their interest? Why is this a problem?
   - Professional
   - Personal
   - Business
   - Economic
   - Intellectual
   - Societal
CELIBATE

5. Is there an ethical issue?
   - Does it violate a professional code of ethics? Which section(s)?
   - Does it violate moral, social or religious values?

6. Is there a legal issue?
   - Practice act/licensure law and regulations? Which section(s)?
   - Review the checklist for possible legal issues

Legal Issues

- Age Discrimination?
- Antitrust?
- Assault and/or battery?*
- Breach of contract?
- Child abuse?*
- Copyright violation?*
- Confidentiality of student records?
- Covenants not to compete?
- Disability Discrimination?
- Elder abuse?*
- Embezzlement?*
Legal Issues

- Family Medical Leave Act?
- Fraud? (Insurance)*
- Gag clauses?
- Guardianship/ conservatorship?
- Kickbacks?*

- Malpractice?
- Medical fraud?*
- Modalities without training?
- Negligence?
- OBRA violation?

Legal Issues

- Patient confidentiality?
- Plagiarism?
- Sex discrimination?
- Sex with a patient?*
- Sexual harassment?

- Spousal abuse?*
- Theft?*
- Trade secrets?
- Treatment without a prescription or referral?*
- Violation of privacy laws?
CELIBATE

7. Do I need more information?
   • What information do I need?
   • Is there a treatment, policy, procedure, law, regulation or document that I do not know about?
   • Can I obtain a copy of the treatment, policy, procedure, law, regulation or document in writing?
   • Do I need to research the issue further? What does the literature say?
   • Do I need to consult with a mentor, my manager, and expert in this area or someone else?

8. Brainstorm possible action steps

CELIBATE

9. Analyze action steps
   • Eliminate the obviously wrong or impossible choices
   • How will each alternative affect my patients, other interested parties and me?
   • Do my choices abide by the applicable practice act and regulations?
   • Do my choices abide by the applicable code of ethics?
   • Are my choices consistent with my moral, religious and social beliefs?
CELIBATE

10. Choose a course of action (considering ethical principles and philosophies)
   • The Rotary Four-Way Test
     • Is it the truth?
     • Is it fair to all concerned?
     • Will it build goodwill and better friendships?
     • Will it be beneficial to all concerned?
   • Is it win-win?
   • How do I feel about my course of action?

Let’s Practice

• Terri is a student at the Sunnyside Nursing Home. She has struggled throughout her student internship. As her supervisor, you have given her specific feedback repeatedly. At midterm, she received a failing grade. At the final evaluation your boss tells you not to fail Terri because she has a learning disability. The facility does not want to be sued. You had no previous knowledge of Terri’s learning disability — only her failing performance.
CELIBATE -- Let’s Practice

- What is the problem?
  - The boss wants the supervisor to pass a failing student
- What are the facts of the situation?
  - Terri is a student intern
  - Midterm performance was failing
  - Terri’s supervisor provided her with adequate supervision
  - Terri failed to modify her behavior
  - Terri forgets to abide by patient safety precautions

CELIBATE -- Let’s Practice

- What are the facts of the situation?
  - Terri’s is still failing at the end of the fieldwork
  - The supervisor intends to fail her
  - The rehab director tells the supervisor not to fail Terri
  - The supervisor learns for the first time of the learning disability
  - The learning disability was not considered
  - The facility does not want a lawsuit
CELIBATE -- Let’s Practice

- Who are the interested parties? What is the nature of their interest?
  - Terri
  - Supervisor
  - Rehabilitation Director and facility
  - Terri’s future patients and employers
  - Academic program from which Terri came
  - Other therapists/students at the facility
  - Terri’s professional association/licensing board

CELIBATE -- Let’s Practice

- Is there an ethical violation?
  - Yes, violates provisions of justice, veracity

- Is there a legal issue?

- Are there other possible legal issues?
  - ADA, filing a false report, practice act violation, negligent supervision, contract breach, confidentiality

- Do you need more information?
  - First or last fieldwork assignment? ADA and practice act guidelines
CELIBATE -- Let’s Practice

- Brainstorm possible courses of action
  - Fail Terri
  - Pass Terri
  - Call the coordinator at the university
  - Research the ADA issue
  - Complain to the rehabilitation director’s boss
  - Call the police? Terri’s parents?
  - Contact the Justice Department
  - Consult with an ADA lawyer
  - Discuss the situation
  - Quit your job rather than fail Terri

CELIBATE -- Let’s Practice

- Analyze the action steps
  - Eliminate the obviously wrong or impossible choices
    - Calling the police
    - Contacting Terri’s parents
    - Discussing with spouse or clergy
    - Quitting your job

- Choose a Course of Action
  - Call the academic program for guidance and/or another facility supervisor
  - Feel good about the choice
PROTECT THY PATIENTS AND THYSELF

Avoiding Ethical Dilemmas

P -- Put a copy of your licensure law on your desk and read it!
R -- Report ethical and legal violations
O -- Open your eyes
T -- Tell them you want it in writing or in email
E -- Encourage ethical behavior
C -- Complete, thorough documentation
T -- Think!!
Avoiding Ethical Dilemmas

T -- Take the patient’s interest above all
H -- Handle situations as they arise
Y -- Yearn to learn

Avoiding Ethical Dilemmas

P -- Plug into your professional associations
A -- Ask a lot of questions
T -- Train and supervise all subordinates properly
I -- Internet sources
E -- Establish a relationship with a mentor or peer
N -- Never fall behind
T -- Take a good look at the professional literature
S -- Surf the internet for regulatory changes

&
Avoiding Ethical Dilemmas

T -- Take the time to read your code of ethics
H -- Hand over patients to those with expertise
Y -- Yield to the dictates of payers
S -- Save a copy of correspondence
E -- Explore all alternatives
L -- Look at professional association/licensure homepages
F -- Fill out all forms accurately and truthfully

Questions?

Thank You!!
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