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Ethics in Occupational Therapy

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Florida A&M University
Coalition for Disability Health Equity

Learning Objectives

- Define 3 principles of Ethics
- Differentiate between legal and ethical issues
- Identify ethical challenges in occupational therapy
- Apply an approach to solving ethical challenges in occupational therapy practice

Difference Between Legal & Ethical?
Managed Care

- Prospective payment systems
- Gatekeepers
- Case managers
- Control over number of visits, charges, length of stay
- Medicare
- Medicaid Managed Care

Economics of Health Care
Health Care Reform
- Health information technology
- Comparative effectiveness research
- HSAs
- P4P
- Payment Issues
- More patients
- Prevention
- Focus on outcomes

Shorter Length of Stay
- Less time to work with patients
- Harder to see progress
- Higher acuity level
- Weekdays and weekends

Shift in Treatment Settings
- Less inpatient - more outpatient and community-based treatment

CONTINUED
Technology
- Computerized documentation
- New equipment
- New technology
- Higher patient expectations

More Educated & Engaged Consumers

Staffing Shortages
- Not enough staff
- Part-time or PRN staff
- Use of students and unlicensed personnel
Productivity Pressure
- Do more in less time
- More patients
- Dovetailing and doubling

Organizational Hierarchy
- OTs with different levels of training
- Use of unlicensed personnel-aids
- Blurring of roles

Competitive Market
- Competing for clients
- Competing for funding
- Competing for services
- Benchmarking
  - Have to do it better, cheaper, faster
Uninsured and Underinsured

- Increased out-of-pocket expense
  - Higher deductibles
  - Co-pay and co-insurance
  - Exclusions
- Uninsured clients → bad debt
  - States that didn’t expand Medicaid
  - States that did and limit rehab
- Loss of coverage with job loss

Graying of Population

- Baby Boomers are aging
- Insufficient resources
- Higher expectations
- Empowered clients
- Sandwich generation
- Aging workforce

Increase in Certain Diagnoses

**Wounded Warriors**
- Traumatic Brain Injury
- Depression
- Post-traumatic Stress Disorder

**Autism**
- Asperger Syndrome
- Pervasive Developmental Disorder
- Sensory Processing Disorder
Health Care Reform

- OT is now an essential benefit under the Affordable Care Act
- Physician Fee Schedule

How do these changes affect ethical practice?

- Early discharge
- Emphasis on outcomes
- Increased cost to patient
- Pressure to see more patients
- Pressure to use less skilled staff
- Less time for supervision of staff or students
- Less time for staff development
- More patients

It's an Ethical Jungle Out There

Licensure Board Concerns
Where do ethics come from?

Where do our Ethics come from?
- Our religious beliefs
- Our family’s values and beliefs
- Our cultural values
- Our community values
- Our personal morals

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

continued
Main Ethics Principles

- **Beneficence** (do good)
  - Provide benefits to persons and contribute to their welfare.
- **Nonmaleficence** (do no harm)
  - Obligation not to inflict harm intentionally
- **Respect for Persons/Autonomy**
  - Acknowledge a person’s right to make choices, to hold views, and to take action based on personal values and beliefs
- **Justice**
  - Treat others equitably, distribute benefits/burdens fairly

Autonomy

- Treat the client according to client’s desires, within the bounds of accepted standards of care
- Acknowledge “a person’s right to hold views, to make choices, and to take actions based on personal values and beliefs”
- Also applies to students, participants in research studies, and the public who are seeking information about services

Rights

- the ability to take advantage of a moral entitlement:
  - to do something, or
  - not to do something.
Autonomy

- one’s moral right to make choices & decisions about one’s own course of action
- the right to self-determination. (Monagle, 1998)
- assumes one’s ability to analyze alternatives, make a responsible choice, and carry out one’s plans.

Autonomy

- Respect for autonomy
  - We refrain from interfering with the individual’s own choices. (Jonsen, Seigler, Winslade, 2010)

Autonomy

- One may ethically interfere with an individuals’ choices when
  - he or she cannot take these steps, or
  - in a situation where the individual’s chosen action interferes with the rights of others
In the health care context:

- Allowing patients to make their own choices, &
- Enabling them to make their own choices.
- How does this apply to Occupational Therapy?

Paternalism

- Paternalism occurs when:
  - one fails to respect another’s autonomy, and
  - acts with disregard to that individual’s rights.
  (Beauchamp & Childress, 2009).

Paternalism

- When individuals act in a paternalistic manner:
  - they substitute their own
    - beliefs,
    - opinions, and
    - judgments
  - for the patient’s judgment.
Paternalism

- They may act without informed consent or against the patient's wishes under the guise of a desire to benefit the patient. (Garrett, Braillie, Garrett, & McGeehan, 2009).

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Paternalism

- Usually people justify paternalistic actions by claiming they acted in the person's best interest.
- This often occurs in healthcare when the patient's wishes and the family or OT/OTA's wishes differ.

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Principle of Informed Consent

- Informed consent obligates OTs & OTAs to provide clients with
  - truthful,
  - comprehensive information
- on all assessment and intervention strategies to ensure they can make willing, informed decisions (Kornblau & Burkhardt, 2012; Shannon, 1993).

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Definition

Informed consent is defined as
- a client’s willing acceptance of an intervention
- after adequate disclosure of the nature of the intervention,
  • including its risks and benefits,
- and the alternatives and their risks and benefits
  • (Jonsen, Siegler & Winslade, 2006; Shannon, 1993)

Informed Consent

One can determine the adequacy of disclosure by exploring
- what a reasonably prudent occupational therapist would tell a client under similar circumstances (health professional-centered approach),
- or which information reasonable clients need to know to make rational decisions (client-centered approach)
  • (Jonsen, Siegler & Winslade, 2006)
Except when…

- Two important exceptions to the requirement to obtain informed consent before carrying out health care treatment interventions:
  - Emergency Doctrine
  - Therapeutic Privilege

Privacy Vs. Confidentiality

- Privacy entails respecting a person’s right to limit access to his or her personal sphere.

Hippocratic Oath

- Anything I see or hear of the life of men, whether in a professional capacity or otherwise, which should not be passed on to others, I will hold as professional secrets and not divulge them. (Quoted in Hammonds vs. Aetna Casualty & Surety Co., 243 F.Supp 793, 797 (N.D. Ohio 1965))
Confidentiality

- Confidentiality focuses on informational privacy.
- It prevents disclosure of information previously disclosed within a confidential relationship
  - (Beauchamp & Childress, 2009; Jonsen, Siegler & Winslade, 2006.)

Confidentiality

- All health care providers have a duty, or obligation
  - to limit access to information gathered in the course of treatment, and
  - to keep the information strictly between the health care provider and the patient

Confidentiality

- Protect client’s confidential information
- This may be negated by laws and regulations requiring disclosure to appropriate authorities without consent, i.e. when abuse or neglect is suspected
- Also applies to students, participants in research studies, and the public who are seeking information about services
Duty

- Obligations individuals have to others in society.
- Sometimes duties exist because of the nature of the relationship between the parties.
  - Parent-child
  - Doctor-patient
  - Therapist-client

Duty Owed to Patient

- Reasonably prudent person doctrine
  - the concept that a person of ordinary sense will use ordinary care and skill in meeting the health care needs of a patient.
    - Mosby’s Dental Dictionary, 2nd edition. © 2008 Elsevier, Inc. All rights reserved.
- Reasonable person standard
  - A standard of behavior that is appropriate and expected for any ‘reasonable’ person under particular circumstances.

Duty Owed by An OT/OTA

- Occupational therapy practitioners should act in the same manner as another of similar education, skill, and training would in a similar circumstance
An action can be ethical, legal, both, or neither.

What is the difference between ethical and legal?
- Ethical – abiding by one’s moral code
  • Something is “right” or “wrong”
- Legal – permitted by law
  • Something is “legal” or “illegal”

Penalties are different
- Ethical –
- Legal –

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Law vs. Ethics

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<tr>
<td>Federal Statutes</td>
<td>Standards of Practice</td>
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<td>State Statutes</td>
<td>Codes of Ethics</td>
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<td>State Regulations</td>
<td>Social Values</td>
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<td>Federal Regulations</td>
<td>Religious Values</td>
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<td>Case Law</td>
<td>Cultural Values</td>
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<tr>
<td>(Licensure Laws)</td>
<td>Moral Values</td>
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Penalties

<table>
<thead>
<tr>
<th>Law</th>
<th>Ethics</th>
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<tr>
<td>Fines</td>
<td>Fines</td>
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<tr>
<td>Monetary Damages (punitive or compensatory or restitution)</td>
<td>Loss of Professional Privilege, License, and/or Certification</td>
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<tr>
<td>Imprisonment</td>
<td>Reinvestigation of Membership in Professional Organization</td>
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<tr>
<td>Injunctions</td>
<td>Revocation – Public or Private</td>
</tr>
<tr>
<td>Revocation or Suspension of License</td>
<td>Censure – Usually Public</td>
</tr>
<tr>
<td>Publication of Revocation, or Suspension of License</td>
<td>Publication of the Ethical Violation and Penalty Imposed</td>
</tr>
<tr>
<td>License Placed in Probationary Status</td>
<td>Report to licensure or certification board</td>
</tr>
<tr>
<td>Termination</td>
<td>Termination</td>
</tr>
</tbody>
</table>

Case Study

- Mary recently graduated from school, passed her required practice exam, received her license/certification three weeks ago and just started her first job as an occupational therapy practitioner.
- In a long-term care facility where she works, she walks into a patient’s room to see the patient and finds the patient on the floor. Mary has a history of facing reprimands from her supervisor for failing to lock the wheelchair.
Professional Codes of Ethics

- Professional codes of ethics
  - incorporate sets of rules or principles
  - intended to express the particular values of the profession as a whole.

Professional Codes of Ethics

- Membership in a professional organization extends
  - an obligation,
  - a responsibility, and
  - a commitment to the profession to abide by the association’s code of ethics.

Ethics and Licensure?

- Some licensure laws incorporate Codes of Ethics as their standard of behavior,
  - Example North Carolina
- "Incorporate by reference"
The Occupational Therapy Code of Ethics and Ethics Standards (2010)

- Aspirational Document

“The Occupational Therapy Code of Ethics and Ethics Standards (2010) is a guide to professional conduct when ethical issues arise.

- Ethical decision making is a process that includes awareness of how the outcome will impact occupational therapy clients in all spheres.”

Applications of Code and Ethics Standards

- “Applications of Code and Ethics Standards Principles are considered situation-specific, and where a conflict exists, occupational therapy personnel will pursue responsible efforts for resolution.”

- “These Principles apply to occupational therapy personnel engaged in any professional role, including elected and volunteer leadership positions.”
Specific Purposes of OT Code of Ethics

1. Identify and describe the principles supported by the occupational therapy profession.
2. Educate the general public and members regarding established principles to which occupational therapy personnel are accountable.
3. Socialize occupational therapy personnel to expected standards of conduct.
4. Assist occupational therapy personnel in recognition and resolution of ethical dilemmas.

Enforcement

- Enforcement Procedures for the Occupational Therapy Code of Ethics and Ethics Standards revised 2009
- Who enforces the Code and Ethics Standards?
  - AOTA Ethics Commission (EC) (members only)
  - Licensure boards (some)
  - NBCOT (have their own)

Disciplinary Actions - Potential Sanctions

- **1.3.1. Reprimand**
  - A formal expression of disapproval of conduct communicated privately by letter from the EC Chairperson that is
    - nondisclosable and noncommunicative to other bodies (e.g., state regulatory boards [SRBs], National Board for Certification in Occupational Therapy, ® [NBCOT®]).

- **1.3.2. Censure**
  - A public formal expression of disapproval.
    - Published
Disciplinary Actions - Potential Sanctions

- **1.3.3. Probation of Membership Subject to Terms**
  - Failure to meet terms will subject an AOTA member to any of the disciplinary actions or sanctions.

- **1.3.4. Suspension**
  - Removal of AOTA membership for a specified period of time.

- **1.3.5. Revocation**
  - Permanent denial of AOTA membership.

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OT Code of Ethics Principles

- **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.

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OT Code of Ethics Principles

- **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.
OT Code of Ethics Principles

- 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.

OT Code of Ethics Principles

- 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.

Beneficence

- "Beneficence requires taking action by helping others;...by promoting good, by preventing harm and by removing harm"

- Examples of beneficence include:
  - Protecting and defending the rights of others
  - Preventing harm from occurring to others
  - Removing conditions that will cause harm to others
  - Helping persons with disabilities

Beauchamp & Childress 2009 pg. 151
Beneficence & Code of Ethics
- Respond to referrals in a timely manner (1a)
- Provide appropriate evaluation and plan of treatment (1b)
- Avoid use of outdated or obsolete tests or data (1d)
- Provide OT services within practitioner’s level of competence and scope of practice (1e)
- Terminate OT services when client’s needs and goals have been met or when no further change (1h)
- Report any unethical or illegal acts (1m)

Nonmaleficence
- Obligation to not inflict harm on others
- Beneficence refers to actions that incur benefit; Nonmaleficence refers to non-action to avoid harm
- Includes not imposing risk of harm, even if risk is without harmful intent.
  - In other words, if the standard of care outweighs the benefits of such care, the ethical course is to refrain from providing the treatment

Nonmaleficence & Code of Ethics
- Ensure continuity of services or options for transition to appropriate services to avoid patient abandonment (2b)
- Avoid relationships that exploit the service recipient, student, research participant, or employees …or conflict with professional judgment and objectivity (2c)
- Avoid engaging in any sexual activity with a service recipient (2d)
- Remedy personal problems and limitations that might cause harm (2e)
Nonmaleficence

- "Do no Harm"
- One of the oldest ethical principles
- Reminds us that if we cannot help patients, at the very least, we owe a duty not to harm them. (Shannon, 2009).

Social Justice

- Also referred to as “distributive justice”
  - fair, equitable, and appropriate distribution of resources
- Individuals and groups should receive fair treatment
- Practitioners should act to limit the impact of social inequality on health outcomes

Procedural Justice

- Making and implementing decisions according to fair processes
- Following policies, regulations, and laws
- Upholding current regulations:
  - Reimbursement
  - National and state laws governing the profession
  - Regulatory agencies established to protect recipients of services, research participants, and the public
Procedural Justice & Code of Ethics

++++++++++++++++FRAUD ALERT+++++

- Be familiar with and apply the Code and Ethics Standards in the work setting (5a)
- Be familiar with and abide by institutional rules, and if rules conflict with ethical practice, take steps to resolve the conflict (5b)
- Hold appropriate national, state, or other requisite credentials for the services they provide (5e)
- Take responsibility for maintaining continuing competence (5f)
- Ensure that all duties assigned to other OT personnel match credentials, competence, and scope (5g)
- Provide appropriate supervision (5h)
- Fees shall be fair, reasonable, and regardless of actual reimbursement (5o)

Veracity

- Comprehensive and accurate transmission of information and fostering the understanding of the information
- Must carefully balance veracity with other potentially competing ethics principles, cultural beliefs, and organizational policies

Veracity & Code of Ethics (Fraud*)

- Accurately represent credentials, qualifications, education, training, duties, competence (6a)
- Refrain from any form of communication that contains false, fraudulent, deceptive claims (6b)
- Record and report in an accurate and timely manner and in accordance with applicable regulations (6c)
- Documentation for reimbursement purposes is done in accordance with applicable laws, guidelines, and regulations (6d)
- Be honest, fair, accurate, respectful, and timely regarding employee and student job performance (6h)
Fidelity

- Maintaining a good-faith relationship between service recipient and provider
- Maintaining collegial and organizational relationships
- Balancing duty to service recipients, students, research participants, other health care professionals, and organizations

What is an Ethical Dilemma?

Conflict between…

- Your PERSONAL and PROFESSIONAL VALUES
- Two values/ethical PRINCIPLES
- Two or more possible actions – each with reasons strongly FAVORABLE and UNFAVORABLE

Ethical Dilemmas

Conflict between…

- Two UNSATISFACTORY alternatives
- Your VALUES/PRINCIPLES and your PERCEIVED ROLE
- The need to ACT and the need to REFLECT

Maurice Bernstein, MD Bioethicsdiscussion.blogspot.com. 3/8/05

continued
CELIBATE Method© for Analyzing Ethical Dilemmas

1. What is the problem?
2. What are the facts of the situation?
3. Who are the interested parties?
   - Facility, Patient, other therapists, observers, payors, etc

4. What is the nature of the interest?
   - Why is this a problem to me??
   - Professional
   - Facility’s or Organization’s interests
   - Moral
   - Religious
   - Social

5. Ethical -
   - Does it violate the Code of Ethics?
   - Which section?
6. Legal - Is there a legal issue?

- Practice Act/Licensure Law & Regulations
- Other laws: Check the C.E.L.I.B.A.T.E.® Checklist?

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C.E.L.I.B.A.T.E.® Checklist

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<thead>
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<th>Is there a legal issue?</th>
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<th>No</th>
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<td>Assault and/or Battery? *</td>
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<td>Breach of contract?</td>
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<td>Confidentiality of Student Records</td>
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<td>Covenants not to compete?</td>
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<td>Disability discrimination?</td>
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<td>Elder Abuse?</td>
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<td>Employee/Independent Contractor?</td>
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C.E.L.I.B.A.T.E.© Checklist 2

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C.E.L.I.B.A.T.E.© Checklist 3

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<td>Theft?</td>
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<td>Trade secrets?</td>
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<tr>
<td>Treatment without a prescription or referral?</td>
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<tr>
<td>Violation of Privacy laws? (Aids in Florida) (Medical Information in Michigan) (What does your state do?)</td>
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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, an expert in this area, and/or a lawyer?
8. Brainstorm Possible Action Steps

9. Analyze Action Steps
   - Eliminate obvious wrong or impossible choices
   - How will each alternative affect my patients, and other interest parties and me?
   - Do your choices abide by the Code of Ethics?
   - Do your choices abide by the Practice Act & Regs?
   - Is there evidence to support my possible choices?
   - Is there relevant literature and what does it say?
   - Are my choices consistent with my moral, religious and social beliefs?

10. Chose your course of action considering ethical principles & 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 you feel about your course of action?
Avoiding Ethical Dilemmas

- Keep a copy of the Code of Ethics handy & read it
- Keep a copy of your Practice Act & Regulations handy & read them
- Get it in writing
- Read your journal

- If something doesn’t seem right, it probably isn’t
- Nothing is free
- If its too good to be true, it probably is
- Read the supervision requirements documents & follow

- Protect Thy Patients & Thy Self

Protect

P Put a copy of the licensure law on your desk & read it
R Report ethical violations to ethics and licensure boards
O Open your eyes
T Tell them you want it in writing
E Encourage ethical behavior
C Cover yourself with contemporaneous, complete, correct, and comprehensive documentation - evaluations and progress notes. “The 4 C’s”
T Think
Thy

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

Patients

P Plug into your professional associations
A Ask a lot of questions if you are unsure of an action or task someone wants you to perform
T Train and supervise all subordinates properly
I Internet sources keep you on top of changing info
E Establish a relationship with a mentor
N Never fall behind
T Take a good look at the professional literature
S Surf the internet for changes in regs under which you work.

& Thy

T Take the time to read your professional code of ethics and standards of practice
H Hand over patients to those with more expertise
Y Yield to the dictates of Medicare regulations and other rules and regulations with which you work on a regular basis
Self

S Save a copy of all written and electronic correspondence
E Explore all alternatives
L Look at professional association and licensure or certification board home pages on a regular basis for changes
F Fill-out all forms accurately and truthfully

References

- Graber, GC. Basic Theories in Medical Ethics in Monagle, JF, Thomasma DC, (1999) Health Care Ethics, Aspen, Gaithersburg, MD