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Ethics in Fieldwork

Dennis Cleary, MS, OTD, OTR/L
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The Ohio State University
Division of Occupational Therapy
School of Health and Rehabilitation Sciences
College of Medicine

Learning Objectives

Through the Lens of AOTA’s Code of Ethics…
- Identify Ethical and Legal issues related to student fieldwork including:
  - Supervision
  - Liability and Malpractice
  - ADA, FERPA, HIPAA
  - Billing
- Evaluate situations that might pose ethical dilemmas for supervisors and students
- Recognize the ethical obligations of the student, supervisor, and the University.
Dear Mr. Cleary:

This letter is in response to your correspondence regarding clarification on the purpose of occupational therapy practitioners taking continuing education activities in ethics for each renewal period and asked for suggestions on ethical topics to include in a continuing education workshop.

As of July 1, 2004, Ohio occupational therapy practitioners are required to complete at least one contact hour of ethics education per renewal cycle. The ethics requirement was enacted for occupational therapy practitioners to refresh their knowledge on the ethical laws governing the practice of occupational therapy and to enhance the licensee’s ability to maintain an ethical conscience to preserve the integrity of profession. In addition, the ethics requirement strengthens the occupational therapy community by maintaining consumer confidence in the occupational therapy services being provided.

The Section encourages your participants to periodically visit the Board’s website (http://otptat.ohio.gov) to review the Occupational Therapy Practice Act, Frequently Asked Questions, newsletters, and other publications from the Section.

The Section thanks you for your correspondence and appreciates your understanding that it is your professional responsibility to remain current with professional standards. Should you have any additional questions, please contact the Board at (614) 466-3774 or via e-mail at board@otptat.ohio.gov.

Sincerely,

The Occupational Therapy Section, Ohio Licensure Board

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**Ethical, Legal and Moral Reasoning...**

- **Ethical (AOTA)**
- **Legal (law)**
- **Moral (personal belief)**

- Something can be moral but illegal
- Something can be legal but unethical
Socrates

I cannot teach anyone anything. I can only make him think.
-Socrates

Ethics

• Ethics is a branch of philosophy that attempts to assist us in deciding what is right and wrong in human conduct (RATIONAL ARGUMENT)

• ETHICAL REASONING takes place when there is a need to provide moral reflection on a specific action or behavior. What should you do or not do?

  ➢ AND THERE MAY BE NO GOOD ANSWER BUT, MAYBE THERE IS A BETTER BETWEEN TWO

• Professions have ethical codes or principles they enforce.

Morality

- Personal Belief System.
- May be shared by a group (Religions).
- May and does guide how law is written.
- Suggest what should be done.

*Decisions are not necessarily based on legal consequences, but on personal beliefs of what should or should not be done.*

- Conscientious Objector or Civil Disobedience


Legal Reasoning

- Comes from the executive, legislative, and judicial branches of government
- In the US, law is derived from the People (or in health care, insurance companies!)
- It is open to interpretation: flexible and changeable
  - What is permitted today may not be tomorrow
  - But for our purposes, today is today!
  - Sometimes these things conflict!

- Legal reasons suggest/identify what should be done, and consequences if they are not... (legal runs the jails)

Illegal – Don’t do this

- Abuse of drugs or alcohol
- Conviction of a felony
- Conviction of a crime of moral turpitude
- Conviction of a crime related to the practice of the profession for which one holds a license
- Practicing without a prescription or referral (if required by the state’s practice act)
- Apply electrical modalities without proper training (for OT in some states)
- Obtaining a license using fraud or deception
- Gross negligence in practicing one’s profession
- 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
- Deceptive advertising
- Providing unnecessary services
- Exercising undue influence over patients or clients
- Failing to maintain adequate records
- Failing to provide adequate supervision
- Practicing under another’s name
- Failure to perform a legal obligation
- Practicing medicine
- Performing services not authorized by the patient
- Performing experimental services without first obtaining informed consent
- Practicing beyond scope of practice
- Failing to comply with continuing education requirements
- Inability to practice competently
- Sexual relations with a patient

Medicare Fraud – don’t do this either

- Making false claims for payment
- Making false statements for payment
- Billing for visits never made
- Billing for non-face-to-face services
- Paying or receiving kickbacks for goods and services
- Soliciting for, making an offer for payment, paying, or receiving payment for referrals.

Sometimes there are conflicts between ethical, legal and moral reasoning...

**Ethical** (AOTA)

**Legal** (law)

**Moral** (personal belief)

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**Profession** \(\text{prə-\text{'fə-shən}}\), noun

Etymology: Latin, public declaration, from *profitēri*

Date: 13th century

1. the act of taking the vows of a religious community
2. an act of openly declaring or publicly claiming a belief, faith, or opinion: *protestation*
3. an avowed religious faith
4. a calling requiring specialized knowledge and often long and intensive academic preparation
   a. a principal calling, vocation, or employment
   b. the whole body of persons engaged in a calling

Characteristics of a Profession

1. Continuously grow its knowledge base
2. Functions autonomously to form policy
3. Maintains high standards by force
   – Licensure Boards, AOTA, NBCOT
4. Members are committed to learning
5. Place service above public gain
6. Provide practical services vital to human and social welfare


AOTA Codes of Ethics...

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AOTA’s Core Values

1. Altruism (Welfare of others)
2. Equality (Impartial, free of bias)
3. Freedom (Client-focused)
4. Justice (Inclusive of Diverse Communities)
5. Dignity (Respectful Treatment)
6. Truth (Accurate Communication)
7. Prudence (Sound Judgment via ethical reasoning)

Primary Resources…

- State of Ohio OT Practice Act
- **Clinical Supervision in Occupational Therapy Practice** by Donna Costa (AOTA press) 2007.
- Self-Assessment Tool for Fieldwork Educator Competency (AOTA 1997) AOTA.org
“As gatekeepers of the profession, clinical supervisors will continue to be heavily involved with ethical standards for practice. The most instrumental approach to this responsibility is to be well-informed and personally and professionally sanguine. Both are accomplished by continually putting ethics in the foreground of discussion, contemplation, and practice. In this case, perhaps more than any other, a supervisor’s primary responsibility is to model what they aspire to teach.”

Bernard and Goodyear, 2004, p. 72


**Sanguine:**

(adj.): Cheerfully optimistic, hopeful, or confident.
Principle 1. (BENEFICENCE)

Why take Fieldwork Students?

- Fresh Ideas and Learning
- License and NBCOT CEU’s
- 30% of our students typically take a job with a fieldwork site.
- Benefits the profession
- Resources for projects you might not otherwise get to.
- You leave a legacy…

Fieldwork educators are guides in a critical professional transition.
Master Yoda

Much to learn, you still have.

Do or do not. . . there is no TRY.

Named must your fear be before banish it you can.
Principle 1. (BENEFICENCE)

- Don’t discriminate – just as our population has become more diverse, so have our students (Millennials).
- Provide quality services
  - Make sure student has education and experience to carry out treatments
- Best interest of the client, student, and profession at heart.

Principle 2. (NONMALEFICENCE)

- Non-exploitive Therapeutic Relationships
- Promote Professional behavior.
  - We are models
- Ensure we have a diverse workforce
  - Be receptive to students with disabilities
ADA and Fieldwork students

- Students must be found to be eligible for ADA accommodations
- Typically, a College or University’s Office of Disability Services decides what accommodations are reasonable
  - Student’s health care provider determines what accommodations are necessary via letter
  - Office of Disability Services writes a letter that determines accommodations (askjan.org)
  - Student placement made, then a site is approached about accommodations
    - Site Determines if it is reasonable
    - AFWC ensures accommodations carried out

ADA and Fieldwork Students

- Safety may be used to adapt job duties or to exclude students if there is an actual risk vs. perceptions and stereotypes (EPILEPSY)
- If a student does not disclose his/her disability, there is nothing to accommodate
- A site may decline to provide accommodations ‘mid-stream’
  - “It’s better to have them and not need them than to need them and not have them.”
Technical Standards

- Students need to know what is expected of them
- Technical Standards from Academic Programs help students understand requirements
  - Based on Department of Labor, Job Descriptions, and State Licensure Law requirements
  - Language is important and care must be taken to insure student’s rights are protected
    - [http://medicine.osu.edu/hrs/ot/Documents/technical_standards.pdf](http://medicine.osu.edu/hrs/ot/Documents/technical_standards.pdf)

Site Job Descriptions and Weekly Objectives

- Job Descriptions for fieldwork sites are important
  - Clarify what your particular site requires
  - Might need to involve HR personnel when there are issues
    - “I need to know before you say no!”
- Weekly objectives clarify expectations
  - Most frequent change to weekly objectives
  - Extend time to meet a certain objective
Injuries during Fieldwork

- Student has an obligation to report.
- Facility has no legal obligation to provide a reasonable accommodation to students.
- But… most do (light duty…)

Principle 3: Autonomy and Confidentiality

**FERPA**
1. Student must consent to have records released or performance discussed
2. This applies both the fieldwork educator and the university.

**HIPAA**
1. Student has same HIPAA protection as patients.
2. Student may choose not to disclose disability (no accommodation).
Glinda the Good Witch

You had the power all along my dear. You are more capable than you

Principle 4. DUTY of FW Educators  
(Johnson et al OT Practice 2007)

1. Clear performance expectations
2. Collaborates with the student in goal setting.
3. Prepares students for challenging situations.
4. Provides activities to challenge a student’s optimal performance
Duty of FW Educators…

5. Provides the student with prompt, direct, specific, and constructive feedback.

6. Makes specific suggestions to the student for improvement in performance.

7. Uses verbal, non-verbal, and written communication effectively.

8. Initiates interaction to resolve conflict and to raise issues of concern.

9. Uses a variety of approaches to facilitate student performance (written, supportive, confrontational, multiple supervisors)

10. Elicits and responds to student’s feedback and concerns (introverts/extroverts)

11. Collaborates with student and AFWC to identify and modify learning as needed.

12. Serves as a role model for professional behavior
Mr. Miyagi

Never trust spiritual leader who cannot dance.

What was positive about the feedback from Mr. Miyagi?

- Provided opportunities for learning before assessment
- Specific
- Checking for understanding
- Creating a need for learning
- Passion
- Maintains calm professionalism
Ohio Revised Code for Student supervision (4755-7-01)

1. A supervising occupational therapy practitioner shall adhere to the following criteria:

- **Be licensed** and in good standing, by the OT section of the licensure board.
- Must have completed **one year of clinical practice** experience as a fully licensed occupational therapy practitioner.

Ohio Revised Code for Student supervision (4755-7-01)

2. The Supervising Occupational therapy practitioner shall only assign duties or functions to the occupational therapy student that are **commensurate with his/her education and training**.

3. An occupational therapy student shall be supervised by an occupational therapist. An OT assistant student shall be supervised by an occupational therapist or an OT assistant.
Duty: Not all students are created equal... and sometimes doing your duty is hard.

Supervisor, Student, Site, and Patients

Gandalf the Grey

You Shall Not Pass!
When a student struggles…*

- Identify Issues early (week three)
  1. Identify specific problem behaviors (from site objectives) with student.
  2. Receive student input.
  3. Describe level of competence expected. Suggestions for student improvement.
  4. Ask for student feedback on how you can improve supervision.
  5. Sometimes failure wakes a student up…

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Dumbledore

It is our choices that show who we truly are, far more than our abilities.
Great Resources from AOTA


Principle 5. PROCEDURAL JUSTICE

- Understand and stay updated on laws, and association and facility policies…
- Maintain timely records of professional activity.
- Understand student billing.
- Contracts.
What are your legal obligations as a supervisor?

- Contract with employers
- Defined in state law, insurance contracts, and national standards.
- Primary legal issues: malpractice, liability, duty to warn, protect, and report, due process; confidentiality and informed consent.

Be Aware of Reimbursement requirements

- Because this is stored electronically…
- Medicare B Guidelines typically are the most restrictive
- You should reach out to your billing department to ensure you are complying with requirements of the insurance companies you work with
Supervision Definitions

- **Clinical Decisions made by OTR:** The OTR is present, not treating other patients and is directed by the therapy, either by ‘prior authorization’ or during the treatment.

- **Line of sight:** I see you.

- **State practice act:** “The supervising Occupational therapy practitioner shall only assign duties or functions to the occupational therapy student that are commensurate with his/her education and training.”

Principle 6. VERACITY

- Represent credentials and qualifications truthfully.

- Disclose any potential conflicts of interest.

- Refrain from any form of communication that contains false, fraudulent, deceptive, or unfair statements or claims.
Liability – Vicarious and Direct:

1. Vicarious Liability – one assumes the liability for the actions of another. (supervisor is not directly negligent)
   **Respondent Superior**: assume the liability for those you supervise.
   
   Poor Judgment (Breach of Duty) is not necessary for Vicarious Liability

2. To avoid Direct Liability lawsuits (Negligent FW Educator)
   - Keep student within scope of practice.
   - Provide regularly scheduled supervision.
   - Provide emergency coverage.
   - Assess student’s level of competence
   - Assess clients that students are treating.
   - Monitoring student’s work with clients.
   - Avoid McDreamy situations…

   Haynes (2003)
Principle 6 Veracity

- Identify and fully disclose errors.
- Tell the truth and avoid deception.
- Supervisors must respect the confidentiality they have with their students – seek others’ opinions to help with the student and supervisor’s learning.

Due process

- Students have the right to…
  2. Orientation to policies of the institution.
  3. Appeal their evaluation.
- Students have due process rights at the University too.
Principle 7. FIDELITY

- Maintain professional communications towards and about peers.
- Encourage and ensure that other Occupational Therapists maintain these ethical standards and be familiar with procedures to follow if they are not.

Thank You for the fidelity you have shown to our profession.
Case Example

Your student appears lethargic and uninterested and her performance gets worse as the clinical progresses. She doesn’t seem to notice obvious safety issues in the environment. She has not disclosed any mental health diagnosis to you, but you suspect some underlying depression.
What do you do?
- What ethical principles are involved?
- What do you do?
- What do you not do?

Case Examples
Hospital setting. Tenth week. Student goes to evaluate a patient alone without reading chart (Doctor looking at it). OTS has patient sit EOB. Nurse walks in and asks why TLSO is not on...
What do you do?

- Ethical principles involved?
- What does the student do?
- What does the FW Educator do?
- What issues is the student having?
- How do you help the student resolve these issues?
- Does the student continue with fieldwork?

Case Example

Tim, your student, is one good looking man. Melissa, an SLP who works in the same hospital system that you work in, but she is outpatient and you are inpatient. Tim did a great training on OT’s role in Dysphagia and Melissa called Tim at his house and asked for ‘clarification.’ Tim asks for advice. What do you do?
What do you do?

- What ethical issues are involved?
  - What do you do?
  - What do you advise Tim to do?