Caveat Emptor

The information presented today is for your education and is designed to inform and stimulate your thinking.

This workshop is not intended to be used as a substitute for independent legal advice or legal consultation.

Question #1 True or False?
When a client is an imminent danger to an identifiable other, the therapist is required to notify the police within 24 hours.

Question #2 True or False?
When the records of a client who is an 11-year-old minor are subpoenaed, the therapist must take direction from the child’s parents.

Question #3 True or False?
Jimmy is an isolated 16 year old who spends much of his time playing video games online. In the last session he tells you that he downloaded some child pornography to see what it was all about. He said it was “boring”. Even though he has not transmitted the images to anyone else, his therapist must file a mandated report to Child Protective Services.

Question #4 True or False?
If a therapist learns that a dependent adult or an elder has received serious physical injury through abuse in a long-term care facility, a therapist has 2 hours to make a written report to law enforcement.
Question #5 True or False?
A therapist must report sexual abuse if a 16-year-old client says she and her 29-year-old boyfriend have had consensual intercourse.

Question #6 True or False?
As of 2016, if a therapist learns in his/her professional capacity that a minor is homeless, this represents reasonable suspicion of neglect and must be reported to CPS or the police.

Question #7 True or False?
According to the 2016 “End of Life Option Act”, the mental capacity of a terminally ill adult is determined by the patient’s attending physician, the consulting physician and a “mental health specialist.” A mental health specialist can be psychiatrist, psychologist or an LCSW.

Question #8 True or False?
When considering financial abuse of an elder, a sudden change to an elder’s will or estate triggers a financial abuse report to Adult Protective Services.

Question #9 True or False?
A client discloses to her therapist that the client’s neighbor is sexually molesting a child. This information is sufficient to trigger the mandate to report child abuse.

Question #10 True or False?
The law differentiates between “parental” vs. “criminal” spanking when assessing the presence of abuse.
Morning Quiz Answers

1. False 6. False
2. False 7. False
3. True 8. False
4. True 9. True
5. False 10. True

Pillars of Legal and Ethical Practice for Mental Health Professionals

The Standard of Care
A legal basis for judging the conduct and behavior of professionals in the same field.
For psychotherapists, this is "the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful therapists would possess and use in similar circumstances." [California Approved Civil Instructions]
Falling below the standard of care amounts to unprofessional conduct and exposes a therapist to ethics citations and/or civil or criminal liability.

Meeting the Minimum Standard of Care

1) Informed Consent
- Providing adequate information to the client about therapy and your approach to it.
- Assessing the client’s competence to consent.
2) Consultation
- Consulting with legal counsel when necessary.
- Consulting with colleagues when a client’s clinical needs challenge your competence.
3) Documentation
- Meeting standards for the content and confidentiality of records.

Confidentiality
A legal and ethical restriction on therapists from volunteering or disclosing information obtained in a therapeutic relationship.
Failure to maintain confidentiality is considered to be unprofessional conduct.
In general, a therapist is responsible to maintain confidentiality about:
- The fact that the client is in therapy
- The content of treatment
- Any identifying information that could reasonably reveal to others outside of therapy that the client is in treatment.

Confidentiality: Court Precedents

People v. Stritzinger (1983):
The value of psychotherapy as a profession “is bottomed on a confidential relationship; the doctor can be of assistance only if the patient may freely relate his thoughts and actions, his fears and fantasies, his strengths and weaknesses, in a completely uninhibited manner.”

In re Lifschutz (1970):
“A patient must expose his entire self, his dreams, his fantasies, his sins, and his shame to his psychotherapist. This would be impossible if the patient knew that the psychotherapist would then reveal these communications to the whole world.”

Confidentiality is Not Absolute
There are many circumstances in which therapists must or may disclose confidential information to third parties. These exceptions to confidentiality fall into two classes:
- Mandated exceptions, in which the therapist must break confidentiality;
- Permitted exceptions, in which the therapist may break confidentiality.
**Mandated Exceptions**

Child abuse  
Dependent adult abuse  
Elder abuse  
Tarasoff  
Patriot Act

**Mandatory Exception to Confidentiality: Child Abuse Reporting**

When, in your professional capacity, you have knowledge or a reasonable suspicion of child abuse, a therapist must report by phone immediately and in writing within 36 hours to a child protective agency including law enforcement, social services, etc., within the state of California.

Failure to report as required is punishable by up to 6 months in jail and a fine of $1000.

Mandated reporters have absolute immunity from legal action related to filing a child abuse report. There is no penalty for over-reporting.

**Child Abuse Reporting**

Suspicion vs. Investigation

The standard for reporting is “reasonable suspicion” NOT “proof” or “evidence”. The responsibility is to assess, not investigate.

Information obtained by talking with a client constitutes assessment.

Efforts to gather information from 3rd parties constitutes investigation.

**Sufficient vs. Insufficient Information**

Hearsay, if from a credible party, if in your professional capacity, and constituting “reasonable suspicion”, is sufficient for a child abuse report.

Do not avoid making a report because you have insufficient information; make a report with partial information if necessary.

CANRA requires a report and does not make exceptions to the mandate if the reporter did not know the location of the abuse, the abuser, or the abused.

**What to Report: Child Abuse**

Therapists must report upon knowledge or reasonable suspicion of child abuse:

Physical abuse  
Unlawful corporal punishment  
Unjustifiable punishment or willful cruelty  
Neglect  
Sexual Abuse

**Physical Abuse**

Physical injury or death inflicted by other than accidental means by another person.

Physical abuse includes the death of a child inflicted by other than accidental means by another person.

Physical abuse does not include injuries which occurred during a mutual affray between minors.
Unlawful Corporal Punishment

Defined by the consequence to the child: “Traumatic condition...caused by a physical force.” (Penal Code 273.5(c))

What about “lawful” corporal punishment?

“Parental privilege” distinguishes “parental” spanking from “criminal” spanking by the nature of the physical contact:
- Motivated by discipline vs. cruelty/malice?
- Proportional to the child’s actions
- Considers child’s age, place on the body (the behind vs. head), severity/superficiality of bruising, implement (wooden spoon vs. sledgehammer)

(Gonzalez vs. Santa Clara County Department of Social Services, 2014)

Unjustifiable Punishment or Willful Cruelty: Defined

Willfully causing or permitting any child to suffer, or inflicting thereon, unjustifiable physical pain or mental suffering.

Mental suffering: evidence of severe depression, or untoward anxiety resulting from something the caretaker did or didn’t do.

Willfully causing or permitting the person or health of a child to be placed in a situation such that his or her person or health is endangered.

Serious Emotional Damage to a Child

Infliction of serious emotional damage to a child is a permitted, not a mandatory report. (Penal code 11166.05). If a therapist reports “emotional abuse”, liability is limited.

Again, the standard is to assess whether there is a “traumatic condition” inflicted upon the child.

Traumatic condition would be confirmed by negative changes in a child’s behavior or mood, or the worsening of an existing medical or psychological condition.

Child Neglect: Defined

“Negligent treatment or maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare.”

The condition of homelessness does not by itself constitute child neglect. Reporting is not mandated in order to help minors who might otherwise avoid services (food, shelter, medical aid) for fear of triggering a report.

Child Sexual Abuse: Defined

Sexual assault
- Rape, statutory rape, or lewd or lascivious acts
- Penetration of the vagina or anal opening
- Any oral/anal or oral/genital contact
- Intentional touching of genitals or intimate parts for purposes of sexual arousal or gratification
- Masturbation in the presence of a child

Sexual exploitation
- Conduct involving matter depicting a minor engaged in obscene acts, including sharing information via social networking, sexting, downloading, etc. (AB 1775, effective 2015).
- Facilitating engagement of a child in prostitution or performance involving obscene sexual conduct

Reporting Consensual Sexual Activity Involving Minors

Consensual sexual activity involving minors is not always reportable. For example:
- Pregnancy, in and of itself, does not constitute a basis to report sexual abuse.
- A person age 16 or older who has consensual intercourse with anyone older than him/herself would not constitute a report.
- Two 14-year-olds having consensual intercourse would not constitute a report.
- The reporting mandate arises due to the type of sex and the difference between ages of minors ages 13, 14 and 15 and the age of their partners.
**Reportable Consensual Sexual Activity Involving Minors**

Consensual sexual activity involving minors must be reported if:

- It involves sexual intercourse between a minor under the age of 16 and an adult 21 years of age or older.
- There is no report for a 16-year-old having consensual intercourse with anyone older, no matter how much older that person may be.
- It involves oral or anal sex between minors of any age, or a minor and someone who is not a minor.

**Electronic Transmission of Child Pornography**

As of January 2015, a therapist has a mandated reporting responsibility if a client “knowingly” transmits (i.e. downloads, streams, texts, Instagrams, etc.) a child engaged in an act of “obscene sexual conduct”.

(AB1775, Melendez)

**Reportable Consensual Sexual Activity Involving Minors**

Consensual sexual activity involving minors must be reported if:

- It involves sexual activity of any kind between a minor 14 or 15 years of age and an adult at least 10 years older.
- Sexual activity between a 14 year old and a 24 year old (or a 15 year old and a 25 year old) is a mandated report.
- Sexual activity would not be reported between a 14 year old and a person 21, 22, or 23 years old.
- Sexual intercourse would not be reported between a 14 year old and a 16, 17, 18, 19, or 20-year-old.

**Historical Child Abuse Reports**

There is no mandate to report unless the client is currently a minor.

If an adult discloses having been abused as a child, and the therapist reasonably suspects the abuser has victimized others now under 18, the therapist must report.

Although therapists do not report murders, the murder of a child constitutes child abuse and must be reported.
“Access” to Children

CANRA has no language that if an alleged perpetrator has access to children that a child abuse report is mandated.

The legal obligation is based on reasonable suspicion of abusive activity, not just being in the area.

Making a Child Abuse Report

There need not be a pattern. Any and every incident must be reported.

Telling the child’s parents, your supervisor or employer, school counselor or principal, etc. of your concerns does NOT fulfill any mandate (Penal code 11166(i)(3)).

The report must be held confidential by the reporter. There is liability for releasing a report to an unauthorized recipient (Penal code 11167.5; Cuff v. Grossmont Union High School, 2013).

Reporting Child Abuse That Occurred in Another Jurisdiction

Therapists must report child abuse regardless of the location of the child, the abuser, or the alleged abuse. Reports must be made to an agency that accepts child abuse reports in California.

If you report directly to a state or county outside of California, you fail to fulfill the mandate as required by law.

In addition, reporting outside of California is a breach of confidentiality.

Contents of a Child Abuse Report

Your information
- Name, business address, and telephone number
- What makes you a mandated reporter
- Information and source for reasonable suspicion

If known, the child’s information
- Child’s name, address, location; if applicable, school, grade, class
- Telephone numbers of child’s parents or guardian

If known, the abuser’s information
- Name, address, telephone number and relevant information

(Penal Code 11167)

If a Child Abuse Report is Not Taken

If CPS fails to take the report, the mandated reporter has not fulfilled the duty to report.

Options are to:
- Cite the law (Penal Code 11165.9) that requires the agent to take the report.
- Fax a written report (the one you would send within 36 hours) to CPS, noting why it is being filed by fax rather than phone.
- No follow-up written report is required after the fax.
- The fax may not be in lieu of a phone call; you must call first (Penal Code 11166 (b)(5)).

Employer Obligations re: Child Abuse

State and federal law trumps employer or supervisor policy:
- Interns/associates/trainees who have reasonable suspicion must report even if a supervisor suggests that there is insufficient information.
- If employer policy violates federal or state reporting law, the therapist or intern is bound by federal and state law. (Penal Code 11166 (i)(1))
- Employers are required, prior to hiring and as a condition of employment, to obtain a signed statement that the potential employee knows about and will fulfill the provisions of the Child Abuse and Neglect Reporting Act. (Penal Code 11166.5)
- LCSWs may not be retaliated against if they report agency policy that endangers children to state authorities. (AB 921, effective 2015).
Domestic Violence & Child Abuse

D.V. does not automatically constitute child abuse unless a child is harmed incidental to domestic violence. A report would be made for:
- A child who suffers emotionally as a result of witnessing domestic violence.
- A child who is physically injured as a result of a physical altercation between adults.
- The critical factor is not that the child was exposed to domestic violence, but the effect on the child.
- A child who is a witness to (in addition to or instead of being a direct victim) of domestic violence may receive a protective or restraining order (AB 1850, effective 2015).

Child Abuse: After the Report

Agencies that take child abuse reports must keep the identity of the reporter confidential.

Agencies designated to take child abuse reports are required to provide the mandated reporter with the results of the investigation. Penal code 11170(b)(2))

A reporter may (but is not required to) cooperate with or provide further information to police, CPS or other investigators of the reported abuse without another incident having occurred or a release being authorized. Best practices: without a clear rationale for cooperating, a therapist should maintain confidentiality and not cooperate with investigators.

Dependent Adult/Elder Abuse

- A mandated reporter who has observed, has knowledge, is told by a dependent adult or an elder, or reasonably suspects abuse must report in the state of California.
- Abuse that does NOT occur in long-term care facilities must be filed by phone as soon as possible and by a written report to local law enforcement or Adult Protective Services on a state of California Suspected Dependent Adult/Elder Abuse form within 2 working days.

Dependent Adult and Elder Physical Abuse

Injury caused by other than accidental means by another person.

- The use of physical or chemical restraints without a doctor’s direction or authority. Includes a dependent adult or elder by altering their medication.
- Assault: Credible verbal threats of physical harm.
- Battery: Touching that offends the dignity of a dependent adult or elder.
- Sexual abuse: Assault, coercion, exploitation, harassment.

Dependent Adult and Elder Abandonment

Withdrawal of care by someone who previously had been responsible for the care of a dependent adult or elder.

Dependent Adult and Elder Isolation

Denying a dependent adult or elder access to communication with others.

Usually an indication of another form of abuse being hidden by the isolation.
Dependent Adult and Elder Neglect
Failure to exercise the care that a reasonable person in a similar position would provide, including but not limited to the failure to:
Assist in personal hygiene or the provision of food, clothing, or shelter.
Provide medical care (physical or mental).
Protect from health and safety hazards
Prevent malnutrition or dehydration.
Includes self-neglect: failure of a dependent adult or elder to provide the above for him or herself as a result of mental limitation, substance abuse, poor health, incompetence, illiteracy, or ignorance.

Dependent Adult and Elder Financial Abuse
Taking or appropriating the property of a dependent adult or elder to a wrongful use, or with the intent to defraud, or assisting another in this process or with the use of "undue influence".
Includes anything from stealing money from a wallet or a social security check, to becoming a co-signer on a checking account and then misappropriating the funds in bad faith.
Includes dependent adults and elders who are defrauded by con games and scams.

Dependent Adult and Elder Financial Abuse: Other Information
When admitted to a private residential facility, elders and their representatives must be advised of the elder's right to dignity, privacy of accommodations, and confidentiality of treatment records, and must receive a copy of a statement to this effect (AB 2171, effective 2015).
Child protection personnel may work on multidisciplinary teams that work in DA/ Elder abuse prevention, identification and treatment (AB 2379, effective 2015).

Dependent Adult and Elder Abduction: Defined
The removal from California or the restraint from returning to California of any dependent adult or elder who did not consent or does not have the capacity to consent to the removal or restraint.
The removal from California or restraint from returning to California of a conservatee without the consent of the conservator or court.

DAA & Elder Abuse Reporting
Long-Term Care Facility

<table>
<thead>
<tr>
<th>Physical Abuse</th>
<th>Non-physical Abuse</th>
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<tbody>
<tr>
<td>Abuse that occurs in a State Mental Hospital</td>
<td>Telephone immediately or as soon as possible to law enforcement</td>
</tr>
<tr>
<td>Written report within 2 working days to Adult Protective Services or local law enforcement</td>
<td></td>
</tr>
</tbody>
</table>

Abuse that occurs in a State Mental Hospital

| Abuse that occurs in a State Hospital or local law enforcement |
| Written report within 2 working days to Adult Protective Services or local law enforcement |

Abuse that occurs in a State Hospital or local law enforcement

| Abuse that occurs in an institution |
| Telephone immediately or as soon as possible to Adult Protective Services or local law enforcement |
| Written report within 2 working days to Adult Protective Services or local law enforcement |

Abuse that occurs in a State Mental Hospital

| Abuse that occurs in a State Hospital or local law enforcement |
| Written report within 2 working days to law enforcement |
| Written report within 2 working days to Adult Protective Services or local law enforcement |

Abuse that occurs in a State Hospital or local law enforcement

| Abuse that occurs in an institution |
| Telephone immediately or as soon as possible to law enforcement |
| Written report within 2 working days to law enforcement |

Abuse that occurs in an institution
The Original Tarasoff Case
Established that when:
A therapist knows, infers, or should know . . .
That a client has . . .
"Serious" intent . . .
To physically harm . . .
A reasonably identifiable other . . .
The therapist has a duty to protect the intended victim from harm by:
Warning the intended victim
Notifying the police
Hospitalizing the patient
Anything else that is reasonable under the circumstances to prevent the harm

The Expansion of Tarasoff Under Ewing v. Goldstein
Established that therapists have a “duty to protect” when information communicated to them by:
The patient, OR
A family member of the patient, OR
A credible third party
Leads the therapist to believe that the patient poses a serious risk of physical harm to a reasonably identifiable other.

Tarasoff Reporting Responsibility
As of 2014, the law mandates that mental health professionals must report within 24 hours to local law enforcement a client’s threat of imminent physical violence. SB127 (Gaines)

Fulfilling the Tarasoff Duty to Protect
The mandate is to:
☑ Notify the police within 24 hours
Duty to protect may also include:
☑ Warning the intended victim or victims
☑ Having the client dispose of the means
☑ Using a “No Violence” plan
☑ Having the client hospitalized
☑ Anything else the therapist deems reasonable under the circumstances to prevent the threatened harm.

HIV/AIDS and Tarasoff
There is no mandate to inform and it violates California law to inform a third party of a client who has or may transmit HIV or AIDS.
In addition, HIV/AIDS is a communicable disease, like T.B., avian flu, herpes, or hepatitis B. The law does not put HIV/AIDS in a special class of diseases.

Section 215 of the Patriot Act
National Security Letters are issued by a secret court in an expedited process.
If an FBI agent presents a national security letter compelling a therapist’s compliance with the Patriot Act, the therapist must provide FBI agents with any items that are requested.
The therapist is prohibited from disclosing to the patient or anyone else (who could reasonably inform the patient) that the subpoenaed items were either sought or obtained.
Important Permitted Exceptions to Confidentiality

Evidence Code 1020
Evidence Code 1024
Civil Code 56.10 and 56.11
HIPAA “Use and Disclosure”
Suicidal clients (Evidence Code 1024)
Release authorizations
Welfare and Institutions 5150

Evidence Code 1020
If there is a breach of duty by the therapist or the client, the therapist may break confidentiality to:
- Defend against charges of malpractice.
- Collect client fees.
The therapist is obligated to reveal no more than is necessary in either case.

Evidence Code 1024
If a client is in sufficient danger to self, or at risk of harming another person or another person’s property, the therapist may break confidentiality.
- Usually pertains to suicidal clients
- Document the decision process and the client’s behavior or state of mind that prompted the disclosure.
- Therapists should think twice before making disclosures under E.C. 1024
- Any disclosure should contain the minimum amount of information necessary to accomplish the purpose of the communication.

Suicidal Clients
Therapists are not required to “report” or to break confidentiality when a client is suicidal; however therapists may break confidentiality under E.C. 1024.
Therapists must take reasonable steps to ensure the safety of a suicidal client (Bellah v. Greenson; Nally v. Grace Community Church).
There is no duty to prevent suicide, but absent reasonable efforts to do so, a therapist is exposed to civil liability (Tortuya v. U.S.).
Reasonable steps must reflect, “the average degree of skill, care and diligence exercised by members of the same profession, practicing in the same or similar locality.”

Suicide Protocol
Reasonable steps include, but are not limited to:
- Self-care plan
- Disposal of means
- Increased frequency of contact
- Medical or psychiatric referrals
- Suicide prevention hotline
- Consultation with other therapists
- Consultation with legal counsel
- 24-hour suicide watch
- Voluntary hospitalization
- Involuntary hospitalization

End of Life Option Act
An adult who is diagnosed with a terminal illness can self-administer an aid-in-dying drug prescribed by an attending MD. Some provisions:
- Mental capacity determined by attending MD, consulting MD, and/or a mental health specialist (Psychiatrist or psychologist)
- The adult has made a voluntary decision free from coercion and undue influence
- Procedure requires two verbal requests at least 15 days apart, accompanied by a written request. The written request must be signed in the presence of 2 witnesses. They can not be the attending MD, consulting MD, or a mental health specialist.
Permitted Exceptions to Confidentiality: Health Care Providers

- California law allows patient information to be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for “purposes of diagnosis or treatment of the patient.” (C.C. 56.10)
- HIPAA also directs the sharing of information only for “diagnosis or treatment” without a release.
- These provisions allow therapists to speak to others who are involved in or important to client care, in an emergency or other situation without a release.

Release Authorizations (1 of 3)

- Release authorizations must be in writing.
- Clients have the right to revoke or modify release authorizations; modifications or revocations must be also written to be legally binding.
- The recipient of the confidential information can only release information to another party if authorized in writing to do so.
- If an authorization is generated by someone other than yourself or your agency, it must conform to legal provisions.
- Minors who could have consented to their own treatment may sign, or refuse to sign, their own authorization to release records, including a release to their own parent(s).

Release Authorizations (2 of 3)

A release authorization, in only valid if it:

- Is handwritten by the client or it is in typeface no smaller than 14 point.
- Is separate from any other language on the same page and is executed by a signature which serves no other purpose than to execute the authorization.
- Is signed and dated by the patient or the patient’s representative.
- States specific uses and limitations on the information to be disclosed.

Release Authorizations (3 of 3)

- States the name or functions of the entity that is releasing the information.
- States the name or functions of the person or entities receiving the information.
- States the specific uses and limitations on the use of the information that is released by the client.
- States a specific date after which the ability to disclose expires.
- Advises the person signing the release authorization of the right to receive a copy of it.

Release Authorizations: HIPAA

Under HIPAA, a therapist is allowed to use and share PHI (protected health information) within a practice to provide mental health treatment without a release.

Best practices, however, dictate that a release authorization should be obtained but are not strictly required by law.

A therapist would document the rationale for not obtaining a client’s authorization.

Release Authorizations and HIV / AIDS

A specific and separate release is required if HIV/AIDS information will be disclosed or could be disclosed during the release of other authorized information.

A typical “blanket” release may not be sufficient.
Permitted Exceptions to Confidentiality: W.I.C. 5150

Clients may be involuntarily hospitalized for up to 72 hours if "as a result of a mental disorder...the client is a danger to others, or to himself, or is gravely disabled"

- Law enforcement, staff of a county-designed evaluation facility, designated members of a mobile crisis team, or other professional person designated by the county may admit a client for inpatient care.
- Therapists who are not designated by the county to take such persons into custody may initiate, but may not invoke a 5150.

Therapist Sex with a Patient (1 of 2)

Therapist sex with a patient is prohibited by law and ethics standards.

- When a client discloses sexual contact with another therapist, the therapist who hears the disclosure is required by law to:
  - Provide the client with a copy of the brochure, "Professional Therapy Never Includes Sex"
  - Discuss it with the client

Failure to provide the brochure and discuss it with the client is unprofessional conduct.

Therapist Sex with a Patient (2 of 2)

Therapists who engage in sexual behavior with clients can and do:

- Have action taken against their licenses, i.e., suspensions or revocations.
- Go to jail.
- Get sued civilly by clients.
- Get their names published in professional journals

The average civil settlement in California lawsuits that allege that the therapist and client engaged in nothing more than kissing is . . . . . .

$15,000!!!

Question #1 True or False?

The law allows the informed consent process to be postponed if a client is in crisis or otherwise in no condition to engage meaningfully in the process.
Question #2  True or False?
Per HIPAA regulations, a therapist may provide a summary to a client if that client submits a written request for access to records.

Question #3  True or False?
A therapist treating a couple must obtain the signature of both partners if one member of the couple wants you to speak to his/her psychiatrist.

Question #4  True or False?
A 22-year man who has same sex attraction and his wife of three months ask if you can help make him straight. By law a therapist is prohibited to engage in this type of treatment.

Question #5  True or False?
A minor who is 12 years of age or older may consent to medical care that is related to STD prevention without parental consent.

Question #6  True or False?
Betty and Susan, both age 16, say that they want to get married as soon as possible. By law, they need to both reach the age of majority before this can occur.

Question #7  True or False?
A student who commits an act of cyber-bullying off school grounds may be expelled or suspended from his/her school.
Question #8  True or False?
Records must be maintained a minimum of 7 years from the date a client begins therapy.

Question #9  True or False?
A child who lives with an adult who is not a biological parent can be found by the court to have 3 parents to determine custody, visitation & financial support obligations.

Question #10  True or False?
Before employing a new therapist, a mental health supervisor or agency must obtain a signature from that person indicating that s/he understands and will follow CANRA provisions.

Afternoon Quiz Answers

| 1. False | 6. False |
| 2. False | 7. True |
| 3. True | 8. False |
| 4. False | 9. True |
| 5. True | 10. True |

Privilege
A client’s legal right to withhold testimony during legal proceedings.
Therapists have a duty to assert privilege on behalf of their clients unless directed to do otherwise by the client or the court.

Who holds privilege?
The client holds privilege, regardless of age.
The therapist does not and can never hold client privilege.

Exercising Privilege
Who can exercise privilege?
☐ The client
☐ A client’s legal representative: conservator for an elder, psychologically disabled person (e.g., diagnosed with Bipolar Disorder or Schizophrenia Spectrum Disorder), adult with physical disabilities
☐ Guardian ad litem for a minor
☐ The personal representative of a deceased client
☐ NOT necessarily a parent: Parents may not exercise privilege on behalf of their minor children unless they have been designated guardian ad litem for the legal proceeding in question.
How Should a Therapist Respond to a Subpoena?

Accept the subpoena when it is served
Don’t try to avoid service
The subpoena names the therapist who owns the records or has information
Contact an attorney or malpractice provider
Maintain confidentiality to the extent possible
Assert privilege (do not release information requested in the subpoena)
Contact patient and patient’s attorney (with a release)

How Should a Therapist Respond to a Subpoena?

If the patient decides to waive privilege:
Obtain a signed, written statement from the patient (a release authorization) directing you to release the records or to testify as directed by the subpoena.
Therapist complies with subpoena and produces requested records, including treatment records and process notes, information or testimony.

How Should a Therapist Respond to a Subpoena?

If the patient decides to assert privilege:
Obtain a written statement from the patient directing you to assert privilege
Continue to assert privilege
The patient’s attorney files a motion to quash the subpoena
Judge either quashes the subpoena or issues a court order compelling the therapist to comply

Privilege is Not Absolute: Some Exceptions to Privilege

The court orders that client privilege is waived.
Client has treated confidential information as though it were not confidential.
The patient introduces emotional condition in a legal proceeding.
Therapy was sought to commit or escape punishment from a crime.
Information already disclosed in a child abuse report.

Informed Consent: Legal and Ethical Implications

Provides adequate information to clients so that they can make meaningful decisions about therapy.
There is no legal requirement for a client signature, but a therapist should document the informed consent conversation and the client’s consent to treatment under the agreed-upon parameters.
Failure to obtain informed consent constitutes a failure to maintain a standard of care and exposes a therapist to civil liability.

Informed Consent: Legal Aspects

Fees and the basis for how fees will be determined must be disclosed prior to the commencement of therapy.
If a therapist is utilizing a fictitious business name, the name and license designation of the owner of the practice must be disclosed.
A therapist’s license must be conspicuously displayed in the licensee’s primary place of business.
Informed Consent: Ethical Aspects

Risks and Benefits:
You might feel worse before you feel better."
"Therapy may not work."
"Relationships may change in unpredictable ways."

Therapist availability:
Clients should be informed of the extent of the therapist’s availability for emergencies and for other contact between sessions.

Boundaries:
Advise patients that decisions on the status of their personal relationships are their responsibility.

Recording:
Written consent is required for video taping, audio recording, or permitting third party observation.

Limits of Confidentiality:
Inform patients as to the limits of confidentiality.

Therapist credentials:
Your experience, education, specialties, theoretical and professional orientation and any other appropriate information.

Fees:
Procedures for collecting the fee, raising the fee, and collecting for unpaid sessions. Any restrictions or contingencies for using insurance.

Termination:
A therapist has the right to terminate treatment for reasons including:
Non-payment of fees
Ethical conflicts
Lack of therapeutic progress
Therapist illness or retirement or personal problem

Scope of competence:
Representing oneself and providing treatment only within the boundaries of one’s education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

Who Can Consent to Treat a Minor?
(1 of 2)
- Either parent in an intact marriage.
- Either parent if there is joint legal custody.
- However: It may be problematic to treat a child with the consent of only one parent.
- Only the designated parent if there is sole legal custody.
- Legal guardians.
- Legal guardians or wards of the state: follow the paperwork! Could be lawyer, social worker, foster parent, etc.
Who Can Consent to Treat a Minor? (2 of 2)

- Adoptive parents: same as biological parents.
- Caregivers (grandparents, aunts, uncles, older siblings, step-parents, etc. who are raising children in the absence of parents or legal guardians) must sign Caregiver’s Authorization Affidavit.
- A foster child may be placed with a Non-relative Extended Family Member. (AB 545; 2014)
- Courts may identify more than two parents of a child if the best interests of a child are served by doing so. (SB 274; 2014)

Custody Orders Can be Tricky

Ask to see the most recent custody order when treating a minor whose parents are divorced. Keep a copy in your treatment file.

A joint custody order may have language specifying:
- Both parents must consent to medical treatment.
- Both parents must consent to psychotherapy.
- Both parents must consult before selecting a psychotherapist.

Emancipated Minors

An emancipated minor is accorded many of the legal rights of an adult, including the right to consent to their own therapeutic treatment.

Legally married, OR
In the military, OR
Emancipated by the court which has determined that the minor:
- Is at least 14 years of age
- Is living separately with a parent’s consent or acquiescence
- Is managing his or her own finances (no illegal income)
- Emancipation is in the child’s best interests

Treatment of a Minor Without Parental Consent

A minor age 12 or older who consents to his or her own therapy may:
- Sign a consent form on his/her own behalf.
- Sign a release form on his/her own behalf.
- Submit a written request for access to his/her own records.

Minors and Confidentiality

In general, parents have a right to gain information about the treatment their child has received and/or the child’s well-being. - AND -
Minors have the same general right to confidentiality as adults.
Minors and Confidentiality: Guidelines for Talking to Parents

Parents or guardians should be told at the beginning of treatment that therapists are not conduits of information from children. Parents or guardians should be told not to expect much information about the therapy, but that they can expect to receive:
- General updates on how the child is doing.
- Information on how the parents can be helpful to the treatment process.
- Information about serious concerns the therapist may have about the child’s health or well-being.

Minors and Confidentiality: Guidelines for Talking to Parents

Therapists who are treating a minor and have serious concerns about the behavior and the physical or emotional well-being of that child should consider whether keeping confidentiality is in the child’s best interests:
- Is treatment effective?
- Should the parents be involved?
- Is outpatient treatment the right setting?

Minors and Marriage

1. There is no minimum age for marriage in California.
2. Each minor wishing to marry must obtain the written consent of at least one parent or guardian.
3. A court may give the consent if a minor has no parent or guardian.
4. As of June, 2015 the U.S. Supreme Court ruled that same-sex couples have the fundamental right to marry. This would apply to minors.

Custody Evaluation (1 of 2)

- Therapists may be licensed as custody evaluators after receiving 40 hours of training in domestic violence and continuing education.
- Adhere to ethical standards related to avoiding preference, operating within scope of competence, nondisclosure, and cultural sensitivity.
- Licensed evaluators under the auspice of the BBS may disclose the evaluation report to the board.
(AB 1843, effective 2015)

Custody Evaluation (2 of 2)

- If a therapist is not licensed as a custody evaluator, and parents request custody evaluations, attempt to avoid making any declarations about parental suitability.
- An informed consent document that states parents will not involve a therapist in legal proceedings is NOT legally binding.

Reasons to Create and Maintain Adequate Records

It is considered unprofessional conduct “fail to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.”

Good records indicate that the therapist is providing a good standard of care by providing:
- Baseline and progress information
- Treatment plan
- Record for third party payors on which to base diagnosis, treatment plans, client progress, etc.
- Record of financial transactions
- Evidence of service/protection in a lawsuit
How Long Must Patient Records be Retained?

Therapy records must be retained for at least 7 years from the date of termination. For minors, they must be kept at least 7 years from the time they turned 18, or at least until they are 25.

(SB 578, effective 2015).

Content of Client Records

The law does not specify what constitutes good or adequate records. However, the legal requirements for a summary provide a minimum standard:

- Chief complaints
- Pertinent history of the problem and the client
- Findings from referrals and consultations
- Diagnosis (DSM-based, diagnostic impressions, or family systems conceptualizations, etc.)
- Treatment plan
- Test results (Beck Depression Inventory, AA 20 questions)
- Progress notes

Client Records: Other Items Reflecting Sound Clinical Judgment and the Standards of the Profession

- Informed consent documentation
- Consent to treat minors
- Intake/demographic information
- Fee payment record/balances
- Release authorizations
- Insurance information (authorizations, EOBs — explanation of benefits)

The Treatment Plan

Therapists who are required to defend their treatment of clients are typically asked to produce or describe their treatment plan. This is because interested parties want to know if the therapist was providing an adequate standard of care and acting professionally. Within two or three sessions, therefore, a therapist should create for the record a treatment plan outlining this thought process.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Goals</th>
<th>Interventions</th>
</tr>
</thead>
</table>
| Grief and loss, the death of a parent | Facilitate the grieving process | - Invite conversation about the loss  
- Invite conversation about the effects  
- Explore individual and family functioning  
- Help the client put language to the grief  
- Provide education about the process  
- Referral to grief/loss support group |
| Alcohol abuse          | Move to sobriety              | - Determine client’s willingness  
- Motivational interviewing  
- Pros and cons for continuing drinking  
- Pros and cons of trying to quit  
- Education about the addiction process  
- Education about the recovery process  
- Referrals to 12-Step (AA) |

Progress Notes

The format and content of session-by-session progress is variable. Summaries or detailed notes are acceptable. Never omit relevant clinical information because a client has asked you to or because you don’t feel the laws of privilege are sufficient.

Anyone who reads the notes should have some idea of client issues and therapist interventions. If there is a crisis or the need to break confidentiality, the notes should be detailed and complete in documenting the therapist’s actions and rationale for those actions.
Process Notes

Process notes include subjective analysis, opinion, countertransference, interpretation. A therapist should record consultation for countertransference (date, consultant, purpose: e.g., to ensure the best treatment, etc.) However, all records are legal documents, and as such should not include:

- Personal, derisive, or critical comments
- Anything not relevant to the client’s treatment or diagnosis
- Specific therapist countertransference reactions and fantasies

Record Keeping and Confidentiality

The law requires patient records to be kept confidential:

- Keep records under lock and key or under password protection on a computer.
- Keep separate files for different units of treatment (e.g., one file for family therapy, another for a child from that family who is also seen by the therapist in individual treatment).
- Records (including electronic files) must be transported and destroyed in a manner that protects their confidentiality.

Record Keeping, Confidentiality, and HIV/AIDS

There is no law prohibiting or regulating the inclusion or exclusion of patient information regarding HIV or AIDS in your records.

Agencies or clinics may have policies restricting this information or which outline special treatment of records regarding HIV or AIDS, but these do not reflect any legal requirement.

Patient Request to See Records (1 of 2)

Clients have a right to access the records of their treatment. Requests must be in writing.

- If the therapist is a HIPAA provider, the medical record (AKA “psychotherapy record”) would be provided.
- If the therapist is a HIPAA provider, the psychotherapy notes (AKA “process notes”) would not ordinarily be provided without a court order.
- If the therapist not a HIPAA provider, the therapist could provide a summary of the progress record, but not the process notes.

Patient Request to See Records (2 of 2)

Upon such a request, the therapist may provide:

1. An inspection within 5 business days
2. A copy within 15 business days. The law allows therapists to charge up to 25 cents per page copied.
3. A treatment summary within 10 business days. If the records are extensive, 30 days may be allowed and a “reasonable fee” may be charged to the client.

(California Health & Safety Code Section 123130)

Patient Request to See Records: Refusing Access

This option may be exercised when the therapist determines that there is a “substantial risk of significant adverse or detrimental consequences” to the client if the client were to see the records.

- Document the date of the client’s written request.
- Document the specific detrimental consequence foreseen.
Parents’ Request to See a Minor’s Records
Generally parents have access to records of their minor child’s treatment.
When therapists receive a request in writing, they may allow an inspection, make copies, provide a summary, or refuse if the therapist determines:
- It would have a detrimental effect on therapeutic relationship for the parents to have access to the record
- It would have a detrimental effect on the minor’s safety or psychological well-being.

Ethics: Professional Boundaries
When therapists are charged with unprofessional conduct, the BBS looks at specific red flags and often wants to know—in addition to the specific complaint—about:
- Consistency in length of sessions.
- Consistent and appropriate location of sessions.
- Telephone contact between sessions.
- Personal interaction outside of sessions.

Dual Relationships
A dual relationship occurs when a therapist and his/her patient engage in a separate and distinct relationship either simultaneously with the therapeutic relationship, or during a reasonable period of time following the termination of the therapeutic relationship.
The law does not mention “dual relationships” specifically, but they could amount to unprofessional conduct or negligence.
Not all dual relationships are unethical, and not all dual relationships can be (or need be) avoided.

Prohibited Dual Relationship
Dual relationships are considered problematic if they impair objectivity and/or have the potential to exploit a client.
Dual relationships that are specifically prohibited are:
- Any type of sexual relationship
- A close personal relationship with clients, client spouses, client partners, or client family members.
- Hiring clients, client spouses, client partners, or client family members.
- Engaging in a business relationship with clients, client spouses, client partners, or client family members.
- Borrowing money from clients, client spouses, client partners, or client family members.

Dual Relationships
Examples of avoidable dual relationships:
- Becoming power of attorney or legal advocate for a client
- Buying an item for a client’s child’s school fundraiser
- Accepting gifts or giving gifts; bartering your fee
- Allowing clients to run up large debts.
- Attending client life celebration events, parties, performances
- Writing letters of recommendation for work or school
- Supervising an intern who is also a therapy client
- Becoming a sponsor for a client who is in AA.
- Making a client a facebook “friend”
- Serving as a custody evaluator for one parent of a child in therapy

Examples of unavoidable dual relationships:
- Being the only specialist in a small town where you also obtain services from your clients (gardeners, housepainters, tax attorney)
- Being a sports psychologist and athletic coach
- Performing mandated forensic work for the military or court
- Client joins the therapist’s yoga studio, 12-step group, or professional Board of Directors
- Learning that your spouse’s new real estate agent, accountant, script adviser, etc. is already your client.
Letter Writing

Never write “To whom it may concern” letters.
Report only what you’ve seen or heard first hand and cite the source of information.
Do not predict or speculate about patient’s future behavior.
Do not make custody recommendations unless trained to do this and fulfilling this role.
Do not sign declarations or affidavits drafted by someone else.

Making Friends with HIPAA

“Covered Provider”
Any health care provider who bills insurers, HMOs, governmental entities, etc. for reimbursement via computer-based technology.
A therapist who accepts cash only and/or provides super bills so that clients can bill insurers is NOT a covered entity.
A therapist who bills insurance for clients, but who does so by mail and phone is NOT a covered entity.
A therapist who is a covered entity as a result of employment at one setting is not automatically a covered entity in his or her private practice or at another setting, unless that therapist uses computer-based technology to bill insurers.

HIPAA Objectives

Creates standard medical forms, records, procedures, and requirements to standardize medical and billing transactions.
Contains policies to protect the privacy of patient health information.
Ensures patient rights regarding the use and disclosure their medical information.

Computer-Based Technology

E-mails between therapists and insurance companies or HMOs regarding client PHI.
Logging onto a health plan website and accessing or providing client PHI.
Faxing PHI from a computer-based fax program.
Computer-based technology does NOT include telephone, mail, or stand-alone fax communications with insurers, HMOs, etc.
Covered transactions do NOT include emails between therapist and client.

Summary of HIPAA Requirements

Therapists who are “covered entities” must be in compliance with four basic elements of HIPAA:
1) Privacy Requirements
2) Security Requirements
3) Electronic Transaction and Code Sets Standards Requirements
4) National Identifier Requirements.
HIPAA Privacy Requirements
(1 of 2)
Confidentiality requirements therapists abide by are already, in most cases, at or above privacy rights required by HIPAA.
The additional requirement is that therapists must provide clients with a Notice of Privacy Practices (NPP).
The NPP specifies patient privacy rights and how those rights are being protected.
- Each patient must receive a copy of the NPP.
- A copy of the NPP must be posted in the office.

HIPAA Privacy Requirements
(2 of 2)
HIPAA requires that records be divided into two separate sections: the medical record and psychotherapy notes.
The medical record includes information related to client care, including: medication prescription and monitoring, session start and stop times, type and frequency of treatment, results of clinical tests, diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.
Psychotherapy notes: the contents and analysis of a therapy session.

HIPAA & Business Associates
If a covered provider uses the services of another organization, that organization is called a "Business Associate" (BA) in HIPAA terminology.
The therapist is mandated by HIPAA to sign a "Business Associate Agreement" with any service providers that may access client information.
BAs are bound by the same privacy and security laws that govern HIPAA. A BA can be held accountable for a data breach and penalized for noncompliance with HIPAA.
Examples of Business Associates include: CPA, collections agency, lawyer, technology support, transcriptionist, etc.
Covered providers may disclose information to Business Associates without a release from clients, only insofar as that information enables their service to the therapist.

HIPAA Security Requirements
Covered entities must abide by administrative, physical, and technical security standards.
Install HIPAA compliant security safeguards for the office, for office procedures, and on computer hardware and software.
For therapists with solo practices, this means purchasing approved software or contracting with a health care clearinghouse to provide billing.

Electronic Transaction and Code Sets Standards Requirements.
Covered entities must use code numbers for:
- Aspects of client treatment and care (CPT codes, location codes, diagnostic codes, etc.)
- Procedures related to billing (the numbers used by insurers and HMOs that explain the action they are taking in response to your claim, typically when they are denying payment)

The National Provider Identifier-NPI
The NPI is a 10-digit I.D. number assigned to all covered entities.
It is the primary health care provider I.D. for billing transactions.
Health insurance billing forms (HCFA or OMB 1500) request the provider’s NPI.
It must be used on all HIPAA-covered billing transactions.
To obtain an NPI, go to: https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/CMS10114.pdf and fill out the online application.
with an online application.
NPI is mailed in a few days.
NO HIPAA – NO NPI?
Accept cash, checks, credit cards only? Don’t bill insurance or plan to in the future? Therapists who are not covered entities do not need an NPI.
However:
If you bill insurance—using the phone, fax or mail—having an NPI is likely to make processing paper claims easier, since that’s the number health insurers will be using for covered entities under HIPAA.

HIPAA: Access to Records
- Clients have a right to access their records or “Protected Health Information (PHI)”. This is equivalent to the “psychotherapy record”.
- Client must agree to the provision of a summary. (Contrary to California law).
- Client does not ordinarily have the right to access “psychotherapy notes”.
- In some cases, you may deny access without justification to the client.
- In other cases, if records are denied, the client is entitled to a review of that denial by another health practitioner.
- The client must receive within 30 days of the denial a statement as to the basis of the denial, the client’s right to a review, and how to pursue the complaint.

Insurance (1 of 2)
- Insurance companies typically reimburse mental health professionals only for the diagnosis and treatment of mental disorders (clinical disorders).
- A mental health practitioner would likely not be reimbursed for treating a couple in which neither party had a diagnosable mental condition (V-codes).
- Portability laws (per the Affordable Care Act) require that if a client leaves a place of employment, insurance coverage from the prior employment is retained.

Insurance Insurance (2 of 2)
- Mental Health Parity laws require that benefits be provided equally for specific mental illnesses and substance abuse.
- Parity laws do not require that health insurance provide mental health/substance abuse benefits; but if they do, the benefits must be equivalent to medical/surgical benefits.
- If an insurance company overpays, the company has 365 days from the date of overpayment to request reimbursement.
- The therapist must contest the request within 30 days.
- If the therapist does not contest, the amount will be deducted from next reimbursement.

Medicare and Medi-Cal
Medicare does not reimburse LMFTs, LPCCs and LEPs, but does reimburse LCSWs.
Per the Affordable Care Act (ACA or “Obamacare”) of 2013, Medi-Cal (MHP/MCP) services have been expanded.
In November, 2014, the Department of Health Care Services began accepting applications from private practice professionals to become Fee-for-Service Medi-Cal Providers. See www.medi-cal.ca.gov “Provider Enrollment” for a complete list of application procedures and documents.

Scope of Practice
Scope of practice is a legal concept that defines what mental health professionals in the state of California may legally provide to consumers.
What is out of scope of practice is, e.g.:
- Providing medical advice
- Providing medication advice
- Providing legal advice
- Providing financial advice
**Scope of Competence**

Scope of competence is an ethical concept that defines what any particular mental health professional in the state of California may provide to consumers.

The ethical obligation is to:
- Provide services only within the boundaries of education, training, license, certification, consultation received, supervised experience, etc.
- Expand areas of competence by accepting new cases and obtain additional education, training, experience, consultation, supervision, and/or other relevant professional experience.

**Telehealth**

Telehealth or “telemedicine” is defined as health care or therapy via the Internet or other electronic means. Legal provisions indicate that internet therapy be provided only to residents of California who are currently in California. All confidentiality rules apply. Written informed consent is not legally required. Ethical provisions suggest that therapists only practice internet therapy if it is within their scope of competence and they feel that they can assess and treat via this medium.

**Digital and Social Media: Uses**

Uses include: making/changing appointments, web advertising, website presence, digital treatment records, blogging, networking.

All communications may become part of the clinical and legal record.

Must employ a variety of confidentiality protections (e.g., hackers, marketers, health insurance companies) and boundary protections (“friending”, reviews on “yelp”, dating websites).

Social networking allows therapists and clients to actively seek non-clinical information about each other.

**Digital and Social Media: Risks**

Digital and social media may compromise confidentiality and clinical boundaries:
- Unintentional self-disclosure by therapist or client (e.g., dating website, youtube video).
- Accidental transmission to wrong recipient (e.g., “reply all”, sending half of a long text message)
- Including clinical information in an email or text (e.g., “have you talked to your husband yet?”)

**Digital and Social Media: Some Protections**

Include a “digital and social media” agreement in your informed consent conversation and documents.

Use informed consent to educate clients on confidentiality practices on their devices.

Learn/employ technician for firewall protection

Avoid using any material that may identify clients in blogs, networking sites, non-secure media (e.g., twitter, direct messaging)

**Fees**

Fee must be disclosed before starting treatment.

Fee policies regarding changes, increases or collections should be a signed document.

It is illegal to apply a surcharge to credit card payments.

Obtain a signed agreement regarding your insurance policy whether on a panel or not. Client is responsible for the fee.

Notify a client before using collections and only disclose to the collections agency information pertinent to obtaining the compensation.

Make sure that the collections agency abides by HIPAA regulations as they are a business associate.
Fees for Legal Expenses

It is legal to charge for time and copying expense if records are subpoenaed.
It is legal to charge for time preparing for and appearing for a deposition.
The subpoenaing party is responsible for compensating the therapist.
If called to testify, determine if you will be a percipient witness (fixed day rate) or an expert witness (charge your customary fee).
Some insurance companies only compensate for testimony or depositions that are compulsory; if volunteering to provide testimony, a mental health professional may not be reimbursed.

Advertising: Therapists May Advertise

Therapists can advertise via any medium:
- Radio
- Television
- Movies
- Newspapers
- Magazines
- Brochures
- Business cards
- Mailers
- The Internet
- Etc.

Prohibited Advertising Material

Misrepresentation of fact
Failure to disclose material fact important to the client or person consenting to treatment
Implying false or unjustified expectations
Incomplete disclosure of fees
Unsubstantiated claims of superiority
Unsubstantiated scientific claim
Statements, endorsements, or testimonials from clients
Using “Me & associates” or “counseling center” when you are a sole proprietor or not actually legal partners with other providers

Acceptable Advertising Material

Just the facts: who you are, what you do, where and when you do it, etc.
Information on insurance you accept
Lawful and accurate information about fees
Languages in which therapist is fluent
Your credentials, publications, education, training, specialties
Photo of you and your facilities
Public health information encouraging treatment
Any other factual information

Advertising: License Specifications

License number is required on all public representations or advertisements.
Interns must include “intern” in their license description: MFTI
CAMFT recommends using “MFT intern registration applicant” for trainees who are awaiting an intern number.
CAMFT also recommends that supervisors/employers pay for the intern/associate advertising.

Supervision

Interns, trainees, and associates are allowed six (6) hours per week of supervision toward their experience hours (SB 1012, effective 2015).
Interns at government agencies may obtain supervision via videoconference; need not be in person.
Ratio of 1 supervision unit/10 client hours must be maintained in each setting.
Continuing Education

In order to renew a license, a LMFT, LCSW, LPCC or LEP must acquire 36 hours of continuing education in a two-year licensing period.

Renewal period is two years and runs from license expiration date to license expiration date.

Mandatory Courses

Law and Ethics: 6 hours of continuing education in every renewal (two year licensing) period.

For supervisors of MFTIs or trainees, 6 hours of continuing education in clinical supervision must be earned every renewal (two year licensing) period.

For supervisors of ASWs, there is an upfront one-time requirement of 15 hours of continuing education in clinical supervision.

CE Record Keeping

Business and Professions Code 1887.12 says a licensee “shall maintain records of course completion for a period of at least two years from the date of license renewal for which the course was completed.”

Thus, if your license expires in December, 2015, keep proof of CE coursework done between December, 2013 and December, 2015 at least until December, 2017.

Proof of Coursework

90 days before your license expires, you’ll receive a renewal form from the BBS. At that time, you will:

- Fill out the required information
- Submit the required fee
- Check the box with the statement certifying that you have completed your required continuing education units only after you have actually completed those hours.

You will be required to provide proof of coursework only if you are part of a BBS random audit.

Failure to Comply With CE Regulations

If you do not complete the CE requirements by your license expiration date, or if you are audited by the BBS and found to be not in compliance:

- Your license is deemed to have expired.
- You will be unable to practice.
- You will not be able to renew your license until all required CE hours have been completed.
- And if you are audited and do not have your proof, you will be fined and your name will appear in the BBS quarterly newsletter.

Congratulations on completing 6 hours of Law & Ethics!

Gerry Grossman Seminars
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