

6.01 Questions and Answers on Ethics for Marriage and Family Therapists Section I. Informed Consent

Q. Do both parents need to sign a disclosure statement, providing consent to treat a child?

A. AAMFT ethical standards do not require both parents to authorize treatment for their children.

Best Practice: Have both parents sign your disclosure statement, authorizing treatment. If you do so, keep in mind that both parents will then need to sign the authorization form for disclosure or release of information to third parties.

Q. I am teaching a parenting class, and members of the class want to see me for treatment. Can I provide counseling to my students?

A. No. The AAMFT Code Principle 4.2 provides: "Marriage and family therapists do not provide therapy to current students or supervisees." After the class has concluded, however, former students may seek treatment from you, if they so desire.

Q. When a child has been removed from a home by social services and placed in foster care, do foster care parents have the authority to authorize treatment for a foster child?

A. No, in this situation, the social services caseworker is the person authorized to select treatment providers and to authorize release of information. Usually, social services will authorize foster parents to consent to treatment for a foster child in an emergency. On occasion, foster parents are given a "power of attorney" by social services, giving authority to foster parents to select treatment providers. However, this occurs rarely.

Q. At what age is a client legally competent to consent to treatment and to sign a disclosure statement?

A. Adults 18 years of age or older are competent to enter into a contract, or to consent to medical treatment. Most states allow adolescents 15 years of age or older to consent to mental health treatment.

Q. When I am providing treatment to a minor, and a parent asks for information concerning my client's problems or requests treatment records, what information—and how much information—should I disclose?

A. Where a parent has authorized treatment for their child, the parent is entitled to information concerning the services given or needed. In particular, a parent needs to be informed concerning any referrals for other services needed by the child.

Best Practice: When you first see a minor who has been brought in by a parent for counseling, let both of them know that you will need some degree of confidentiality with the adolescent, so that you can discuss basic issues and problems such as use of drugs or alcohol, sexual experience, or parent-child issues in confidence with the minor. At the same time, let both the adolescent and the parent know that you will, in the exercise of your professional judgment, advise the parent of any "services given or needed." You may state this policy in writing in your Disclosure Statement, and have both parent and minor sign it. Both clients then agree to this process, which will create a safe atmosphere for the minor to disclose to you problems and feelings that will not necessarily be shared with the parent. Establishing ground rules in this manner will help you later if parents become too intrusive in questioning you about information disclosed by the adolescent.

Q. If a client refuses to sign my Disclosure Statement, can I then provide services to that individual?

A. One of the most basic patient's rights is the right to refuse treatment. When a client refuses to sign your Disclosure Statement, which is your "consent to treat form" the client is not providing you with any consent for treatment, and is thereby refusing treatment. If a court has entered a certification, either for inpatient or outpatient treatment, the court's Order presumes that the individual concerned has refused

voluntary treatment. In such a situation, you may offer your services, but the client is still entitled to refuse them.

Section II. Mandatory Reporting

Q. When am I required to make a report concerning child abuse or neglect?

A. National standards require therapists to report suspected child abuse or neglect. That fact should be disclosed to a client, in discussing the limitations on confidentiality.

Q. What constitutes “child abuse” or “neglect”?

A. “Child abuse” means an act or omission that threatens the health or welfare of a child including injury to a child evidenced by skin bruising, bleeding, malnutrition, failure to thrive, burns, etc. Child abuse also includes subjecting a child to sexual assault or molestation, sexual exploitation, or prostitution. “Neglect” occurs when a child’s parent or custodian fails to provide adequate food, clothing, shelter, medical care, or supervision that a parent should provide.

Q. When do I have the duty to warn of a threat by my client or a duty to protect against violence which may be committed by a client?

A. The “Tarasoff” duty to warn and protect against a client’s violent tendencies is recognized by most states. In general, mental health professionals are required to warn of any threat of imminent physical violence made by a client and to warn potential victims of specific threats of imminent harm.

Q. Is there any requirement under the AAMFT Code of Ethics for a MFT to report “elder abuse”?

A. No, AAMFT ethical standards do not impose any such requirement.

Q. Do I have a duty to report another therapist if I know of ethical misconduct on their part?

A. AAMFT Code, Section 1.16 requires that MFT’s “comply with applicable laws regarding the reporting of alleged unethical conduct.”

III. Record-Keeping Requirements

Q. What specific records must I keep?

A. AAMFT Ethical Standard 3.6 requires MFT’s to maintain “accurate and adequate clinical and financial records.” In order to comply with prevailing national standards for record keeping practices, therapists should keep the following records: (1) assessment data; (2) client disclosure statements; (3) treatment plans; (4) signed authorizations for release of treatment information; (5) notes concerning any disclosure of information to include the date, person to whom information was disclosed, and the specific records or information disseminated; (6) billing and payment information; (7) information concerning referrals made to other professionals for services; and (8) session notes concerning each treatment session. State laws or regulations may require other record keeping obligations.

The information which MFT’s must maintain is as follows: (1) identifying data, to include therapist’s name, client’s name, client’s address and age; (2) reason(s) for the marriage and family therapy-psychotherapy services; (3) date of each contact with primary client(s), to include the date on which marriage and family therapy-psychotherapy services began and the date of last contact with client; (4) adequate and reasonable case management records; and (5) name of any test administered, each date on which the test was administered, and the name(s) of the person(s) administering the test.

Q. When a client demands a copy of my file, must I copy it for them?

A. Neither AAMFT ethical standards, federal law, nor HIPAA regulations require that you provide a client with your records concerning treatment. You are entitled to use your judgment in responding to a request for records by deciding whether to provide a copy of records or to provide a treatment summary.

IV. Domestic Relations Evaluations

Q. I have been subpoenaed to testify in a domestic relations case involving former clients whom I saw for couples counseling. The subpoena also requires that a copy of my records concerning the couples counseling be brought to court. The wife has consented to my testimony and to the release of records to her attorney, but the husband has refused to consent to my disclosing any information concerning the couples counseling. What should I do?

A. The AAMFT Code of Ethics, Section 2.2, prohibits the disclosure of information received from clients during couples counseling unless consent is obtained from both individuals in the client group. This ethical principle provides, "When providing couple, family, or group treatment, the therapist does not disclose information outside the treatment context without a written authorization from each individual competent to execute a waiver." Thus, without both the wife's and the husband's consent, you cannot testify or release any records.

Best Practice: You should file a Motion for Protective Order, raising the issue concerning confidentiality and the AAMFT ethical principle involved, so that the court can make a ruling in regard to these issues.

Q. I provided family counseling to a family which is now going through a divorce. An MFT has been appointed by the court to conduct a custody evaluation. The evaluator has asked me for a copy of my records concerning this family; the wife consents and has signed an authorization for the release of treatment records, but the husband has refused for me to provide any information. The children are all under the age of ten, so they are too young to consent. What should I do?

A. In compliance with AAMFT Ethical Standard 2.2, which provides that an MFT "not disclose information outside the treatment context without a written authorization from each individual competent to execute a waiver," you should protect the confidentiality of treatment information and refuse the request for disclosure of treatment information, on grounds that the husband objects.

Q. I have been seeing a Mom and her children in counseling to deal with issues concerning parent-adolescent problems and divorce issues. Mom and Dad are separated. Mom's attorney wants me to testify in court that Mom should have all parenting rights and responsibilities. I have never met the husband, and know little about him, except for information provided by Mom concerning his drug problems and his acts of domestic violence. Can I testify as an expert witness for Mom in the divorce case?

A. AAMFT Principle 3.14 states: "To avoid a conflict of interest, marriage and family therapists who treat minors or adults involved in custody or visitation actions may not also perform forensic evaluations for custody, residence, or visitation of the minor. The marriage and family therapist who treats the minor may provide the court or mental health professional performing the evaluation with information about the minor from the marriage and family therapist's perspective."

If your client's attorney does call you as a witness at the divorce hearing and insists on asking you questions that you do not feel adequately prepared to answer under the circumstances, you may simply respond, "I do not have an opinion on that subject." Or you could simply state, "I do not have the information necessary to make a recommendation to the court on that."

Q. A Mom has brought in her children so that I can make a recommendation to the court. She has full custody of her children, and is opposing the Dad's Motion to Modify Parenting Time, so that he can have more time with his children. I have met with the children, and they do not want to spend more time with Dad. Mom's attorney has asked me to prepare a letter to the judge, summarizing the children's opposition to their father's motion and his request for additional parenting time. Can I prepare such a report?

A. As stated above, AAMFT Ethical Standard 3.14 provides, "To avoid a conflict of interest, marriage and family therapists who treat minors or adults involved in custody or visitation actions may not also perform forensic evaluations for custody, residence, or visitation of the minor. The marriage and family therapist who treats the minor may provide the court . . . with information about the minor from the marriage and family therapist's perspective" as a treating MFT, so long as you have client consent to disclose confidential information in court.

V. Supervision

Q. I am an AAMFT-approved supervisor. What should I do to protect myself from liability, in case I am sued for the actions of a supervisee? For example, how could I defend myself if a therapist that I was supervising was having a personal relationship with a client—without my knowledge?

A. You need to have a supervision contract in writing, which explains the supervisor-supervisee relationship, and specifies the terms of your agreement. AAMFT has a form supervision contract. You can protect yourself, first and foremost, by making certain that you have professional liability insurance which covers you; and you want to ensure that your supervisee also maintains professional liability insurance. You should require that the supervisee give a Certificate of Insurance, which provides proof of professional liability coverage. Then, you need to have the supervisee include you as an "added insured" on their malpractice insurance policy. This is easy to accomplish and is routinely done. Your supervision contract should contain the following commitments from the supervisee: (1) An agreement to comply with the AAMFT Code of Ethics; and (2) to comply with state Mental Health Statutes governing therapists. Of course, any other ground rules for supervision that you want to establish should be set forth in your supervision contract.

Q. What should my supervisee's disclosure statement disclose in regard to clinical supervision and my role as supervisor?

A. The disclosure statement should state that treatment information will be shared with you, in order to assure that all legal and ethical standards for therapy are being met. The Disclosure Statement must identify you, in order to ensure that no conflictual dual relationship exists between you and the client who is receiving services, and should also disclose the basic information concerning your qualifications and experience as an MFT. That helps to establish the client's confidence in you and your ability to direct the treatment.

Q. Am I required to sign the supervisee's treatment notes during clinical supervision?

A. No, this is not required.

Q. I am an MFT who receives weekly supervision from a licensed mental health professional as part of my job. In discussing a confidentiality question with my supervisor, he told me that I had breached confidentiality, and that he had a duty to file a grievance against me. The complaint that he filed was

dismissed, but I am still upset, because I thought that a supervisor-supervisee relationship was confidential. Am I right or wrong in that belief?

A. You are correct, the entire supervisor- supervisee-client relationship is confidential. The AAMFT Code of Ethics is clear in this regard. Principle 4.7 states: "Marriage and family therapists do not disclose supervisee confidences except by written authorization or waiver, or when mandated or permitted by law." The training which occurs in clinical supervision is extremely valuable. Supervisees need to know, of course, that they can raise questions to their supervisor about legal and ethical issues without having a grievance filed against them.

Q. I have had several clinical and administrative supervisors during my years in practice. Each has had different methods, different styles and different procedures. Is there a basic protocol for supervision? What are the essential duties of a clinical supervisor?

A. The standards for clinical supervision published by AAMFT for AAMFT-approved supervisors constitute the protocol. The basic duties of a clinical supervisor are:

- (1) To monitor the supervisee's clinical activities to ensure therapy provided meets basic standards;
- (2) To direct the services provided by the supervisee, based upon appropriate clinical, legal and ethical standards;
- (3) To assure that the supervisee provides the Disclosure Statement at the initial client contact, and that the Disclosure Statement is signed by the client no later than the second visit;
- (4) To assure that clients are informed concerning any changes in the supervisory relationship, and the process of termination of supervision is undertaken with both the supervisee and the clients;
- (5) To assure that records documenting supervision are kept which meet generally accepted standards;
- (6) To assure that a supervision contract is prepared, which establishes the supervisor-supervisee relationship and specifies rules, procedures, and financial agreements;
- (7) To assist the supervisee in becoming aware of and adhering to all legal, ethical, and professional responsibilities;
- (8) To assure that all bills or insurance forms are filled out accurately, and accurately state who provided the therapy and who provided the supervision;
- (9) To have adequate knowledge of legal, ethical and professional standards relating to the clients being served; and
- (10) To ensure that no conflictual dual relationship exists between the client and therapist, supervisor and supervisee, and supervisor and client.

Q. I will need to be tape-recording and videotaping treatment sessions for purposes of supervision. I am concerned that tape-recording sessions may affect the dynamics of interactions, and may affect clients' willingness to disclose information. Do I need to let clients know that they are being tape-recorded, or can I record sessions surreptitiously?

A. AAMFT Principle 1.8 requires that therapists "obtain written informed consent from clients before videotaping, tape-recording, or permitting third party observation." Therefore, you must obtain informed consent from your client in writing, before you may record a treatment session. If a client refuses to allow you to record treatment sessions, you may not do so.

Best Practice: As soon as the videotape or tape-recording has been used for supervision, tape over it or erase the recording.

VI. AAMFT Standards for Business Practices

Q. Am I allowed to trade services with a client or engage in bartering?

A. AAMFT Principle 7.5 states, "Marriage and family therapists ordinarily refrain from accepting goods and services from clients in return for services received. Bartering for professional services may be conducted only if: (a) the supervisee or client requests it; (b) the relationship is not exploitative; (c) the professional relationship is not distorted; and (d) a clear written contract is established." If a client of yours were ever to claim that you took advantage of them in a bartering situation, it would obviously be a problem.

Q. If a client fails to pay for professional services, can I turn the account over to a collection agency or sue in order to collect the debt?

A. AAMFT Principle 7.2 requires that you disclose to a client "the use of a collection agency or legal measures for nonpayment" prior to entering into a professional relationship with a client or supervisee. In addition, Principle 7.3 requires that AAMFT members "give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse." Two obvious problems are created if you sue a client: (1) Principle 7.3 provides that if collection action is taken, "therapists will not disclose clinical information"; and (2) a lawsuit may invite a counterclaim for malpractice, which you would then be required to report to your malpractice insurer. As a practical matter, it is impossible to prove your case in court without disclosing clinical information.

Q. A former client has requested that I send records to her new therapist. This client still has a balance owed for treatment services. Can I demand that the balance be paid before I comply with my client's request for treatment information?

A. No. The AAMFT Code of Ethics (Principle 7.6) is clear that you may not withhold records because payment has not been received for past services.

Q. I have completed a graduate program in marriage and family therapy and an internship in a clinic. How do I know what problems I am competent to treat, since I have limited experience?

A. The AAMFT Code of Ethics states that therapists may not "diagnose, treat, or advise on problems outside the recognized boundaries of their competence." (Principle 3.6.) So long as you have a clinical supervisor, who is a MFT and who is competent to handle your clients' presenting problems and to direct you in the therapy being provided, you can treat the clients involved and obtain experience in this process.

Q. I have a client, who is being seen in couples counseling. His unwillingness to make a serious attempt to cooperate with counseling has been an obstacle to the process of therapy. His flirtatious remarks to me make me very uncomfortable. I feel that I should refer this couple to another therapist, but I do not want to be seen as abandoning these clients. Can I terminate my services and refer the couple out?

A. AAMFT Principle 1.7 states, "Marriage and family therapists do not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment." Principle 1.5 prohibits continuing a professional relationship with clients when it is reasonably clear that the clients are no longer benefitting from the relationship. When clients are no longer benefitting from your services or other reasons exist for referring clients to another professional, you can terminate your relationship with the clients, and refer them to other appropriate professionals. When you have

terminated your relationship appropriately and have referred your clients to other therapists who can provide services which are needed, you are not abandoning your clients. Whenever you make a referral, do it in writing, so that it is properly documented.

Q. What can I do to protect myself from being sued or grieved?

A. There are many things that you can do.

- Keep good records, using SOAP notes or their equivalent;
- Consult whenever ethical issues arise;
- Refer clients to appropriate professionals when you do not have the experience or competence necessary to help them;
- Never sue a client;
- Maintain active membership in professional associations;
- Maintain professional liability insurance with a minimum of \$1,000,000 coverage;
- If you are in private practice set up an LLC or professional corporation to protect your personal assets; and
- Practice with informed consent, explaining to your client any presenting problems, the goals of treatment, the methods of treatment used to achieve treatment goals, and your treatment plan.