New Ethical Dilemmas in the Digital Age

Use of technology by counselors

- is increasing
- presents unique ethical dilemmas

(PBCC Policy, 2013)

Presentation Outline

1. History of Technology Use in Counseling
2. Digital Types
3. Social Media
4. Ethics - Counselor Self Disclosure
5. Emailing & Texting Clients – Privacy & Security
6. Social Media Policies

Ethics codes cannot do our questioning, thinking, feeling, and responding for us. Such codes can never be a substitute for the active process by which the individual therapist or counselor struggles with the sometimes bewildering, always unique constellation of questions, responsibilities, contexts, and competing demands of helping another person. Ethics must be practical. Clinicians confront an almost unimaginable diversity of situations, each with its own shifting questions, demands, and responsibilities. Every clinician is unique in important ways. Every client is unique in important ways. Ethics that are out of touch with the practical realities of clinical work, with the diversity and constantly changing nature of the therapeutic venture, are useless.

(Pope & Vasquez, 1998, xii–xiv)
HISTORY OF TECHNOLOGY USE IN COUNSELING

Audio Taping Clients Began?

1942 by Carl Rogers

3 waves in the advancement of technology
In **1999**, experts predicted advances in technology for therapists/counselors

1. Fax machines, Word processors, answering machines, and voice mail machines
2. Enhancement of test administration, scoring, and interpretation
3. Use of telephone, e-mail, and chat rooms

(McMinn, Buchanan, Ellens, & Ryan, 1999)

... and its **Creeping** into clinical practice

(Mishna et al., 2012)

**Technology ‘Creep’**

- Lack of literature and research to provide guidance
- Technology may be used as part of the ‘**Therapeutic Exchange**’
  - Documentation of the exchange
  - Guidelines for the exchange

(Gabbard et al., 2011; Mishna et al., 2012)
Practitioners are vulnerable to being *blindsided* by NEW ethical dilemmas

Some professionals are....

...ethically astute but struggle to keep up with the technology.

...comfortable with technology but less familiar with ethical codes.

‘Adapting to the new culture wisely will necessarily involve both understanding the ethical principles themselves as well as developing competence in the technology of the burgeoning digital culture.’

*(Lannin & Scott, 2013)*
Digital Immigrants

... people born before or about 1964 and who grew up in a pre-computer world

Like all immigrants... as Digital Immigrants learn to adapt to their environment, they retain, to some degree, their ‘accent’ ...

What is your digital accent?

I am a digital immigrant...

Digital Accent...
‘native speakers’ of the digital language of computers, cell phones, video games, and the Internet

(2012; Premsky, 2001)

‘Digital DNA’ flowing through their bodies

(Dür & Zur, 2011)

Comparison of Digital Types

Digital Immigrants
• Prefer to talk in-person or on the phone
• Don’t text or only sparingly
• Prefer synchronous communication
• Prefer receiving information slowly: linearly, logically, & sequentially
• Prefer reading text (i.e., books) on processing pictures, sounds & video

Digital Natives
• Prefer to talk via chat, text, or messaging thru social media
• Text more than call
• Prefer asynchronous communication
• Prefer receiving information quickly & simultaneously from multiple multimedia & other sources
• Prefer processing/interacting with pictures, graphics, sounds & video before text

(2011; Rosen, 2010; Premsky, 2001)

Other Digital Types

Ways to sort people other than age
• Attitudes
• Comprehension
• Relationships
• Practices
• Comfort with technology

(Feeney, 2010; Toledo, 2007)
Other Digital Types

• Avoiders
• Minimalists
• Tourists
• Enthusiastic/Eager Adopters
• Innovators
• Digital Over-Users/Problematic Users

75% of SUD treatment workforce is over the age of 40

Average age of Clinical Directors is 52...

60% are over the age of 50

Almost one-third of clinical directors report that they are only somewhat proficient in web-based technologies.
Almost 70% of individuals who received SUD services were under the age of 40 (TEDs Data; SAMHSA, 2011)

Social media is a broad term that refers to online forms of communicating that any individual can employ as opposed to ‘industrial media’ which refers to professionally-produced radio, television, and film.

(Kaplan & Haenlein, 2010; http://www.pcmag.com/encyclopedia/term/51162/social-media)
Use of the Internet

87% of Americans use the Internet

The internet as diagnostic tool...

1. 89% of U.S. adults have looked online for health information in the past year.
2. 39% of U.S. adults say they have used the internet to try to figure out what medical condition they or another may have. We call them “online diagnosers.”
3. 53% of online diagnosers talked with a clinician about what they found online.
4. 41% of online diagnosers had their condition confirmed by a clinician.

Peer-to-peer healthcare

1. Among online health information seekers, 16% in the past year tried to find others who might share the same health concerns.
2. 39% of internet users have consulted online reviews or rankings of health care services or treatments.
3. 26% of internet users have read or watched someone else’s experience about health or medical issues in the past year.

(http://pewinternet.org/Infographics/2013/Health-and-Internet-2012.aspx)
(http://pewinternet.org/Infographics/2013/Health-and-Internet-2012.aspx)
FB remains dominant platform

There was little room left for FB growth among teen social media users

<table>
<thead>
<tr>
<th>Where teens have social media profiles or accounts</th>
<th>% of teen social media users who use the following site...</th>
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<tr>
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<td>2011</td>
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<td>Facebook</td>
<td>93%</td>
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<tr>
<td>Twitter</td>
<td>12</td>
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<td>Instagram</td>
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<td>MySpace</td>
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<td>Tumblr</td>
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<td>Google Plus</td>
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<td>Yahoo (unspecified)</td>
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<td>myYearbook</td>
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<td>Pinterest</td>
<td>n/a</td>
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<td>Gmail</td>
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<td>Meet Me</td>
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<tr>
<td>Other</td>
<td>8</td>
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<td>Don’t know / Don’t have own profile</td>
<td>2</td>
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</tbody>
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Use Cell Phones & Text Messages
91% of American adults have cell phones

58% have smart phones

37% have gathered health information on their phones

Almost 20% have a health app
Americans now spend an average of **34 hours** per month using mobile apps and mobile web browsers but only 27 hours a month getting online with their PCs

(Digital Consumer Report, 2013)

29% of Americans own a tablet

The average American owns four technology devices

(Digital Consumer Report, 2013)

80% send and receive text messages

(Pew Report, 2012)
Social Network Site

... a website that provides a venue for people to share their activities with family, friends, and colleagues, or to share their interest in a particular topic.

SNSs are a specific type of social media that allow individuals to:

- construct a public or semipublic profile within a bounded system
- articulate a list of other users with whom they share a connection
- view and traverse their list of connections and those made by others within the system

(Boyd & Ellison, 2007)

Quick Group Activity:
What are Some Examples of Social Network Sites?

Since clients are likely to use SNSs it may be helpful for counselors/therapists to understand the phenomena of SNSs, even if they do not participate themselves.

(Myers et al., 2012)
Ethical Issues

- Ethical Codes and Technology
- Ethics and Self Disclosure
  - Self Disclosure Definition/Guidelines
- Self Disclosure and Social Media
  - Rural Examples
  - Guidelines for Disclosure
- Ethical Reasoning
- Liability Insurance for Social Media

Ethical Codes and Licensing Boards have not caught up with the TECHNOLOGY

In some cases … provide little guidance
Other boards may use existing laws and investigate complaints on the grounds of:

- Unprofessional conduct
- Unethical conduct
- Moral turpitude
- Mismanagement of patient records
- Revealing a privileged communication
- Breach of confidentiality

(Cronquist & Spector, 2011; Spector & Kappel, 2012)

Self-disclosure in psychotherapy is defined as the revelation of personal rather than professional information by a psychotherapist to a client.

(Zur et al., 2003)

All psychologists affirm the importance of being thoughtful and intentional about how they handle issues of self disclosure.

(Schwendt, 1993)
"All disclosures reflect decisions about the boundaries between the private self and the outer world.”

Psychotherapist Self-Disclosure

- Unintentional
- Deliberate
- Accidental
- Verbal
- Nonverbal
- Avoidable
- Unavoidable

(Cur et al., 2009)

Counselor Self-Disclosure

- BENIGN
- APPROPRIATE
- INAPPROPRIATE

(Cur et al., 2009)

Technology has redefined the process of Counselor Self-Disclosure
“Nothing that enters cyberspace is ever completely secure” (Collins, 2007)

Many social network users are communicating in their virtual underwear with few inhibitions (p. 45) (Van Allen & Roberts, 2011; Rosenblum, 2006)

Research found that 60% of medical schools in the sample had posted unprofessional online content, including:

- disclosure of patient confidentiality
- profanity
- discriminatory language
- depiction of intoxication
- sexually suggestive material

(Cretien & Kind, 2009)

Clinicians must be aware that all of their online postings, blogs, or chats may be viewed by their clients and will stay online, in some form, forever.

(Zur et al., 2009)
Interesting professional and ethical challenges as the distinctions between private and public information blurs. ([Behnke, 2008](#))

Intertwining of the Internet and clinical practice ([Clinton et al., 2010](#))

Rural areas and social network sites are characterized by:

- pervasive incidental contact
- inevitable self-disclosure
- unavoidable multiple relationships

4 types of rural dilemmas that involve multiple-role relationships ([Schank & Skovholt, 1997](#))
Overlapping social relationships

Overlapping Professional/Business Relationships

overlapping relationships involving the psychologists’ clients with other clients

overlapping relationships involving the psychologists’ family
For example, just as transparency in rural communities may involve increased knowledge of a psychologist’s whereabouts, some SNSs tag photos with exact GPS coordinates of where they were taken (Nicholson, 2011).

Even when a psychologist creates concrete guidelines for himself or herself around the area of self-disclosure, the Internet can potentially counteract even the best of intentions on the part of an ethical psychologist. (Zur, 2010)

Need to examine psychologists’ personal use of SNS outside of the therapy hour & its impact on psychologists’ reputation & credibility

Should counselors/therapists participate in social network sites as a private citizen?
Certainly, we need to be thoughtful about what we post online and careful about whom we grant access to our personal information.

Questions to Ask Yourself Before Posting

- What are the costs and benefits of posting the information?
- Is there a high probability that clients will be significantly and negatively affected?
- How will the disclosure affect my relationship with my clients?
- Does the disclosure threaten my credibility or undermine the public’s trust in the field of counseling?

Counselors Should Not POST

- Client information
- Disparaging comments about colleagues or client groups
- Unprofessional media (e.g., photographs and/or videos that undercut the reputation of psychological practice)
- Comments about litigation in which one is involved

Five Ethical Principles

- Non-maleficence - do no harm
- Autonomy - clients get to make their own choices
- Beneficence - do good
- Fidelity - keep promises
- Justice - be fair

(Lehavot, 2009)

(Lahey et al., 2011)
Legal Issues

Practitioners should contact both their professional and personal liability insurance representatives to determine if professional and personal liability insurance policies cover ethical violations related to SNSs (Gabbard et al., 2011).

Privacy, Security, & Confidentiality Issues

WHAT’S THE DEAL

EMAILING & TEXTING PATIENTS - PRIVACY & SECURITY
“electronic exchanges”

Security of Email

• Emails are stored at multiple locations: the sender’s computer; your Internet Service Provider’s (ISP) server; & the receiver’s computer
• Deleting an email from your inbox doesn’t mean there aren’t multiple other copies still out there
• Emails are also vastly easier for employers and law enforcement to access than phone records.
• Finally, due to their digital nature, they can be stored for very long periods of time

‘Email is not like mailing a sealed letter or package. It’s more like sending a postcard – people are not supposed to read it while in transit, but it passes through many hands, & one can never be sure that someone is not reading it illegally.’

Ms. Beth Rutkowski
C/o Pacific Southwest
Addiction Technology Transfer Center
Los Angeles, CA

(AMA, 2010-13)
HIPAA New Rule Regarding Email

- Privacy Rule allows providers to communicate electronically with patients
  - Reasonable safeguards
    - Checking email for accuracy
    - Sending an email alert
    - Limiting the amount or type of information disclosed
  - Must be in compliance with 45 CFR Part 164 Subpart C
- Health care providers can provide email reminders to patients if they consent
- Patients can initiate email communications with providers using email

More than one-third of cell phone users

- have sent a text message to the wrong person (38%)
- report that a text they sent was misunderstood by the reader (37%)

(http://www.saurageresearch.com/key-findings-novemberdecember-2009/)
TEXTING

Miscommunications

Text Messages can be saved, sent to an email account, and posted online all without the other person’s permission.

Confidentiality

Text Message Transmission Process
“Traditional Short Message Service (SMS) text messaging is non-secure and non-compliant with safety and privacy regulations under the HIPAA. Messages containing ePHI can be read by anyone, forwarded to anyone, remain unencrypted on telecommunication providers’ servers, and stay forever on sender’s and receiver’s phones.”

(American Academy of Orthopaedic Surgeons, August 2012)

“No it is not acceptable for physicians or licensed independent practitioners to text orders for patients to the hospital or other healthcare setting. This method provides no ability to verify the identity of the person sending the text and there is no way to keep the original message as validation of what is entered into the medical record.”

The Joint Commission November 10, 2011

http://www.jointcommission.org/standards_information/jcfaqdetails.aspx?StandardsFaqId=401&ProgramId=1

MESSAGING

To ensure the patient’s privacy clinicians should consider the use of encrypted email systems or portal messaging systems that can be used by a computer, tablet, or smart phone.
Safe Practices

- maintain physical control of your mobile device/computer

- unsecured networks

- unintentional disclosure
check out what is downloaded on your mobile device/computer and keep the security software updated

activate wiping and/or remote disabling

use a secure portal to send or receive PHI over public Wi-Fi networks

Implement policies & procedures to restrict access to, protect the integrity of, & guard against unauthorized access to electronic PHI (e-PHI)
Do you or your agency have a social media policy?

1. Should clinicians accept Facebook friend requests from clients?
2. Should clients text, email, or take phone calls during sessions?
3. Under what conditions can Google, Facebook, or other search engines be used to find out information about a client?
4. Should a clinician accept testimonials on his or her website?
5. How should a clinician respond to comments or ratings posted on internet sites?
6. How should clinicians notify clients regarding GPS Notification Services?

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(Kaplan, Wade, Conteh, & Martz, 2011)
Thank you for your time!

• Beth A. Rutkowski, MPH
  – brutkowski@mednet.ucla.edu

• Vicki Staples, MEd, CPRP
  – Vicki.staples@asu.edu

• http://www.psattc.org
• http://www.uclaisap.org
• http://cabhp.asu.edu/
• http://www.nfarattc.org