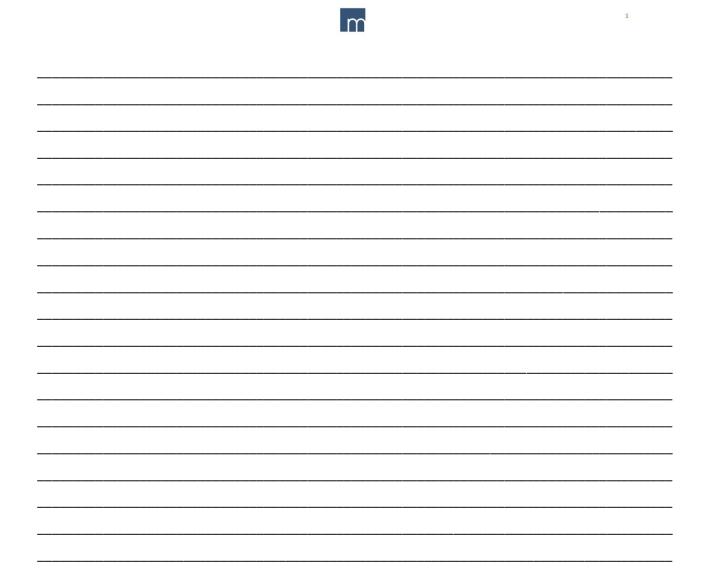


2024 Gulf Coast Social Work Conference Joseph T. Monahan, M.S.W., A.C.S.W., J.D. January 2024



# Introduction

### Case Study

- Social Worker Sara
- Facts
- Discussion Points

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## Building an Ethical Practice

### • Social work practice requires the ability to:

- Understand the applicable law and ethical standards
- Identify issues and areas of potential risk
- Apply tools for making appropriate and ethical decisions
- Successfully articulate and document the social worker's reasons (and reasoning)
- "Risk Management"

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# "Malpractice"

- Professional negligence
- Definition
- Elements
  - Duty
    - Standard of Care
  - Breach

- Harm/Injury
- Causation
  - Proximate Cause

# Basic Risk Management

- · What do we mean...
  - Being aware
  - Communicating clearly
  - Managing expectations
  - Documenting well
- · Why?
- Importance of state laws
  - Licensing boards

## Confidentiality

- Foundation of the therapist-recipient relationship
- Complex issues:
  - Legal
  - Ethical
- Importance
  - · Risk of civil liability
  - Licensure
  - Ethical standards
  - Improving your practice

### Confidentiality

### • Exceptions:

- Duty to warn/protect
- · Mandated reporting
- Court-ordered
- When required by insurance payers, case supervisors, auditors
- · When defending oneself in a lawsuit or license complaint
- Receiving a valid subpoena under state law
- Risk management and the "duty to warn"

# Things to Remember about Confidentiality

- All mental health records are confidential...but...
- The fact that someone is the recipient to mental health services is confidential information.
- Ask: (Who asking? Age of recipient? On what authority?)
- Counsel the recipient on the limitations of confidentiality
- Subpoena notify supervisor legal counsel
- Professionals not supposed to re-disclose from other places
- Consultation, consultation, consultation!

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### **Informed Consent**

• Informed Consent – the bedrock principle of clinical care, the basis of patient autonomy.

#### Informed

 nature, effects, risks and responds to questions

### **Knowing**

 cognitive process of the patient able to understand the information provided and engage in rational decision about whether to accept treatment

### Voluntary

 consent must be voluntary choice free of undue influence by physician, family, clergy or others

#### Communicate

 must be able to communicate decision intelligently




## Informed Consent

- Intended to protect clients' freedom, privacy, and safety
- Based on clients' clear understanding of the services provided
- Challenges to obtaining informed consent
- Who provides informed consent?

# Boundary Issues and Dual Relationships

### Dual Relationships

- Boundary violations v. boundary crossings
- Assessment
- Risk Management

#### How Boundary Issues Arise

- Intimate relationships
- · Personal benefit
- Emotional and dependency needs
- Altruistic gestures
- Unanticipated circumstances

# Boundary Issues

- Ethical Standards
- Risk Management
  - Having a strategy in place
  - Identify the issue
  - Consultation
  - Make a reasoned decision
  - Document the decision-making process and ultimate outcome

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### Termination

- Proper termination requires a systematic procedure for disengaging the working relationship
- Must be concerned about the way services are terminated
- Referrals
  - Three name, number, address
  - Ensure appropriate referral risk of liability if client is harmed
  - Follow-up



### Termination

#### · Reasons for termination

- Different level of treatment required
- Therapist unable or unwilling to continue treatment (proper reasons)
- Conflict of interest develops
- Client not cooperative/does not participate in treatment
- Client stops communicating
- Non-payment

#### Abandonment

- · Legal concept
- Form of malpractice

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## Termination

#### • Risk management:

- Start preparing for termination when services are initiated
- Provide appropriate referrals and participate in transition
- Final face-to-face meeting
- · Client must understand when, why, and how
- Document discussions of termination
- · Send detailed termination letter

# **Clinical Supervision**

#### • Definition:

• "The relationship between supervisor and supervisee in which the responsibility and accountability for the development of competence, demeanor, and ethical practice take place."

#### · Common areas of liability in the context of supervision

- Inadequate and improper supervision or guidance
- Sexual impropriety
  - · Supervisee/supervisor
  - Student/instructor
  - · Therapist/client

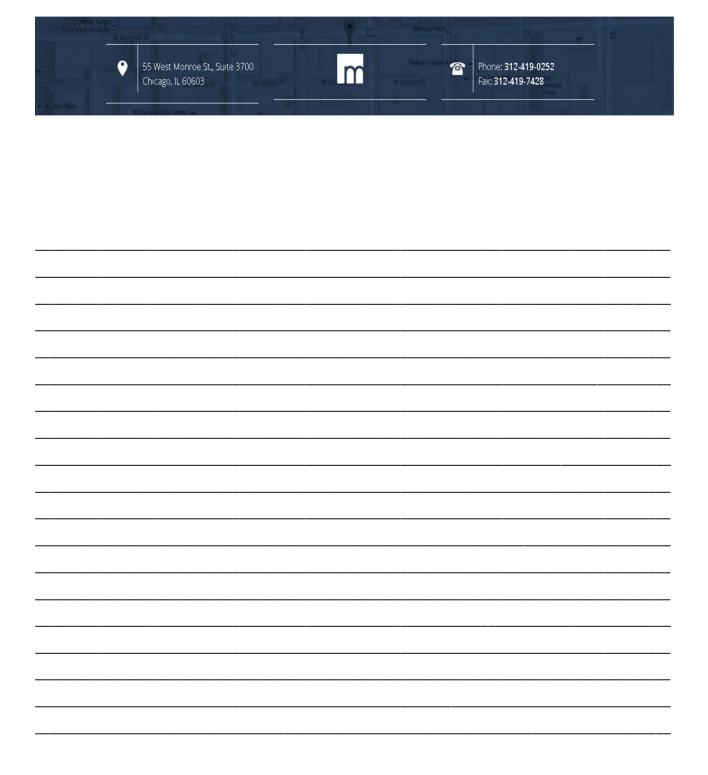
# Conclusion

- Risk management tips and takeaways
- Case study reviewed:

### Thank you!!









#### CASE STUDY

#### Facts:

A year and a half ago, Sara was hired as a social worker at a large high school. For most of that time, she has been providing counseling and intervention services to a 16-year-old female student. Sara has a good relationship with the student and has been seeing her regularly since her parents are recently divorced, and she has been having difficulty coping.

She recently confided to Sara that she began smoking marijuana "once in a while" when she hangs out with her new boyfriend, who has "really helped" her "gain perspective." However, Sara found out that the student met her boyfriend while at a local college campus, where she has been partying on weekends. Sara has overheard second-hand stories of the student binge drinking at parties and engaging in other risky behavior.

Recently, the student has begun to miss a lot of school. When Sara does meet with her, the conversation seems to dance around the possibility that her the boyfriend, who is 22, may be abusing her emotionally, although Sara suspects possibly physically as well. The student has also begun wearing long sleeves to school every day. Although the student has always gotten good grades, the social worker is afraid her grades are dropping and she will no longer be able to get into the prestigious university she has always talked about.

Over the past few years, Sara has gotten to know the father of the student owing to her weekend work with a local charity. Sara doesn't know the student's mother but does know she is business partners with a number of members of the local school board. Sara has become deeply worried about the student, and is increasingly considering taking some sort of action, although she isn't sure exactly what.



#### **Discussion Questions:**

- What are the ethical issues involved? What are the various duties does Sara owe and to whom?
- What are some possible actions Sara can take and what are the up- and downsides?
- Is there any potential for legal liability in this scenario?
- Is there any potential for professional licensure issues?
- What about "real-world" concerns regarding potential action or inaction? Sara's friendly relationship with the student's father may have an effect, or perhaps she is concerned about the professional consequences and retaliation because of the mother's ties to the school board.
- What if Sara makes a choice and takes some action. How should Sara's supervisor respond if the student is then upset with the action Sara chose?
- What if the mother, father, or supervisor are upset with the action taken?
- What if the mother, father, supervisor, or student are upset with the inaction Sara chose in the event some incident occurred?
- Does the supervisor now have ethical or legal responsibilities toward Sara or the student or the parents?

After a few years in the school setting, Sara resigns and starts her own private practice. The student is now 19 years old, and in college. She seeks out Sara over the summer to continue services and address some additional issues she is having. The client discloses to Sara (1) fact she had a sexual relationship with a teacher at her high school – unbeknownst to Sara at the time, (2) she found child pornography in her father's desk drawer when she came home over the holidays.

- What, if anything, must or should Sara do in response to the disclosure of the sexual relationship?
- Of the child pornography?

