

## **Ethics and Criminal Justice for Substance Abuse Counselors**

Upon completion of this entire course, you will be able to:

- Identify ethical theories and principles and their application in the criminal justice setting and/or with criminal justice clients.
- Demonstrate increased skills in identification of ethical dilemmas.
- Demonstrate increased skills in resolution of ethical dilemmas in current practice.

This course is presented in Five Modules: Introduction, Ethical Theories, Ethical Principles, Ethical Decision-Making and The Client/Counselor Relationship. You must complete all five modules to receive 6 ceu's.

### **Module 1: Introduction**

Upon completion of this module, participants will be able to:

- Identify their professional role in relationship to the criminal justice system and substance abuse treatment.
- Explain the importance of professional identity with regard to ethical decision-making.
- Identify potential ethical dilemmas inherent in the student's professional roles.

In the first module we will examine a continuum representing the various professional roles that exist as providers of substance abuse treatment to criminal justice clients and within criminal justice systems. We will discuss why it is important for individuals to identify their position on this continuum and what the implications of that placement are for ethical practice.

In recent years, substance abuse professionals have been seeing larger numbers of clients who are referred by the criminal justice system. In addition, more criminal justice systems are offering treatment in their settings and hiring substance abuse professionals to provide treatment services. Traditional training in ethics for substance abuse counselors has not included a discussion of the different values and theories that exist in

criminal justice agencies and how these may conflict with the values and theories counselors are typically exposed to in their professional training. This conflict often presents ethical dilemmas for substance abuse counselors working in criminal justice settings with this client population.

Because of the variety of services and systems involved with criminal justice clients, it is important for treatment providers to clarify their current role and the expectations inherent in that role as a guide for ethical decision-making and resolution of these dilemmas.

In this module we will look at the different professional roles and expectations that exist on a continuum that ranges from custodial care in an institutional setting at one end to private practice on the other end.

**Custodial  
Care Staff**

**Private Practice  
Counselor**



## **Where are you on this continuum?**

One of the major conflicts in providing treatment in the criminal justice system is the conflict between public safety/security issues and clinical needs of clients. On this continuum, custodial care is placed at one extreme position, where the professional role is focused almost exclusively on security. Private practice is placed on the other extreme where the professional role is focused almost exclusively on providing counseling. Where individuals place themselves on this continuum has implications for:

1. Their relationship with their clients.
2. Which code of ethics should be consulted.
3. Competency issues: what knowledge and abilities are needed.

Our objectives for this activity are for you to identify the placement on this continuum corresponding to your professional role; and for you to identify the relationship of that professional role to ethical concerns and behavior.

- Think about from where you are standing, what are the expectations for delivery of substance abuse counseling? For security?
- How do you feel being at this place on the continuum? Is there somewhere else you would rather be?
- What are some examples of major ethical dilemmas that may be encountered at this position?

In this module we identified our place along a continuum of professional roles. In Module 11 we will begin to look at various ethical theories and their implications for practice.

### **Module II: Ethical Theories**

Upon completion of this module, participants will be able to:

- Describe four types of ethical theory.
- Discuss the application of each theory to ethical decision-making and criminal justice.
- Describe social justice theory.

In this module we will discuss four types of ethical theory and their application in substance abuse counseling: contractual theory, utilitarian theory, care-based theory, communitarian theory. We will also discuss social justice theory. By the time we're done you will be able to discuss how each theory applies to ethical decision making in a criminal justice environment.

### **Ethical Theories**

- **Contractual**
- **Utilitarian**
- **Care-Based**
- **Communitarian**
- **Social Justice**

## **Contractual**

*An act's moral worth depends on the reason for which it was done*

Kant

An act must be universally applicable. Immanuel Kant is one of the philosophers associated with this theory.

Here's an example using the ethical principle of discretion. A substance abuse counselor's obligation is to keep the information discussed by a client confidential. In practicing a contractual theory of ethics, the counselor would cite the moral worth of always maintaining discretion and protecting a client's confidentiality. In applying this universally, the counselor would never divulge clinical information of any client.

## **Utilitarian**

*The greatest good for the greatest number*

Bentham

### **Utilitarian Theory:**

This theory, as written by Bentham, proposes that ethical conduct is that which promotes the greatest good for the greatest number. An act's moral worth depends on whether it benefits the greatest number.

In continuing with the confidentiality example, a counselor would decide where it was in the best interest of the greatest good to divulge confidential information, for example, duty to warn. This theory is the basis for the practice of situational ethics, as each client situation may be different.

## **Care-Based**

*Ethical acts must maintain connectedness*

Gilligan

Care-based theory comes out of the research by Carol Gilligan based on previous research on the development of moral reasoning by Kohlberg. Gilligan replicated these previous studies with female children and found that the results differed from the research Kohlberg performed with male children.

Female children base their ethical decisions on the goal of maintaining connectedness in a relationship. This theory suggests that relationships need to be considered in the ethical decision making process.

*Example:* In applying this theory with regard to confidentiality, a counselor would consider how a decision would impact the clinical relationship. This process may also include asking the client for input.

## **Communitarian**

*Humanly caused benefits that human beings provide to others in community*

Kekes

**Communitarian:** This is a relatively new approach based on the emergence of multicultural awareness. This theory states that ethical reasoning is done in the context of community, and that the moral worth of an act is the benefit it has for the community.

This theory differs from utilitarian because one individual does not determine the greatest good. Everyone in the community is part of the reasoning process.

The example we are using regarding the concept of confidentiality with respect to an individual client is difficult to apply within this ethical theory because individual rights are not the primary focus. The communitarian approach might best be applied in settings such as therapeutic communities or a prevention program where the client is the community. Obviously, counselors would still need to take in to consideration any federal mandates regarding confidentiality even in these settings.

## Social Justice

*The interest of the larger community outweighs those of the individual.  
Symbols of public employment include "oath of office," uniforms/badges,  
constitutional obligations*

We are now going to discuss a different type of theory called *social justice*. Most criminal justice programs have a basis in this theory, which states that the institution exists for the good of society and not the individual.

The employee has to take an oath of office, often wears a uniform, and is obligated to uphold the law and the constitution as opposed to a professional code of ethics. Police officers and probation officers do have a code of ethics, which will be discussed in Module IV.

The theories we discussed in this module are: contractual theory, utilitarian theory, care-based theory, communitarian theory, and social justice theory. Next we will discuss how ethical principles apply to counseling relationships.

### **Module III: Ethical Principles**

Upon completion of this module, participants will be able to:

- Identify six ethical principles that are universally applied in counseling relationships.
- Discuss the application of these principles in their current practice.

The ethical theories we discussed in the previous module give us a general framework in thinking about our ethical behavior with clients. In this module we will look at ethical principles and how they are applied in counseling relationships. As we proceed, think about how these principles apply in your own work environment.

Two different types of ethics are virtue ethics and principle ethics. *Virtue ethics* are individual characteristics and ideals of the person, such as integrity and honesty. *Principle ethics* are based on a set of obligations that define correct behavior. Most professional codes of ethics incorporate both principle ethics and virtue ethics. The following six principles are universally applied in codes of ethics for helping professionals.

**Autonomy:** This is the principle of supporting clients' independence, freedom of choice and self-determination.

**Beneficence:** This is the principle that promotes acting in the best interest of clients.

**Justice:** This is the principle of non-discrimination. This principle guarantees that all clients will have equal access to treatment, and that they will be treated the same as other clients. Although different client populations, may have different treatment needs (i.e. criminal justice clients), the standard of practice should be the same.

**Competence** is the principle that states we as counselors have the knowledge, skills and abilities to provide the services we tell clients we are going to provide.

Think back to the introductory exercise, where each of us selected our place along the continuum. Each professional role along the continuum carries with it different expectations of competency and job performance. These are the expectations clients have of us as counselors.

**Discretion:** The principle of discretion upholds the privacy of the client and their communication with a counselor. It is important to distinguish between the ethical premises of discretion as opposed to a legal determination with regard to confidentiality. A counselor may have a legal obligation that allows for violation of a client's confidentiality, but that obligation is not necessarily ethical.

**Nonmaleficence** is the principle of "do no harm". What are the guidelines for determining if a client will be or has been harmed? For example, could a client be harmed by certain counseling practices offered in a jail setting? Is a jail an appropriate treatment setting? What are some other situations/setting that might be harmful?

### **Module IV: Ethical Decision Making**

Upon completion of this module, participants will be able to:

- Discuss the essential elements of the ethical decision making process.
- Identify the pros and cons of a code of ethics.

- Identify which code of ethics is appropriate for their current practice.

## **Ethical Decision Making**

In this module we will discuss the elements of ethical decision-making and begin to integrate the material covered in the other modules. Codes of ethics are a key ingredient in ethical decision-making and we will discuss the pros and cons of codes and the various codes that may be applicable to your practice.

To begin, we will engage in some ethical decision-making.

### **Scenario 1**

An adult client referred by probation has relapsed in the course of treatment. He is otherwise working very hard at recovery. The agreement with the probation officer is to report any substance use and will result in a violation of probation and the client's incarceration. The substance abuse counselor decides not to report the relapse.

### **Scenario 2**

A substance abuse counselor is counseling a 16 year old client who is on probation. She tells the counselor she is pregnant and the counselor discloses this information to the probation officer.

What ethical principles may be routinely compromised when trying to work in the criminal justice setting (autonomy, beneficence, discretion)?

As we learned from the scenarios, the ethical decision-making process can be complicated. You are practicing ethically in your daily routines without really thinking about it based on your training and experience. A formal decision-making process is only needed when faced with an ethical dilemma. Unfortunately, working within a criminal justice system, there are many dilemmas counselors encounter. We will first discuss the components of an ethical dilemma. Then we will look at the important aspects of a formal decision-making process including codes of ethics.

## Ethical Dilemma



- Choice must be made between two or more courses of action
- Significant consequences exist for not taking one of the courses of action
- Each course of action can be supported by one or more ethical principles
- The ethical principles supporting the course not taken will be compromised

A dilemma occurs when there is a conflict between two or more ethical principles and/or an ethical principle and a legal mandate/policy. There are significant consequences involved in the choices, for example, client welfare being compromised.

This is why it is critical to have a formal ethical decision-making process. There are many models in the literature but all have four recommended steps in common:

- Consulting a code of ethics
- Consulting colleagues/supervisor

- Client welfare is primary focus
- Counselor self-reflection

We will discuss codes of ethics first.



## **Rules of conduct for a specific profession**

Codes of ethics are based on the universal principles discussed in Module III. The first step is identifying which code is appropriate for you and your situation.

Please read your code of ethics. CATC or CAADAC

Codes relate to your credential and/or your membership in a professional association. If you are certified by CADE the CATC code applies to you. If you are certified by CAADAC (CADCA, RRW, RS, CCS, CCJP, CADC 1 or CADC 11) the CAADAC code applies to you.

You maybe a member in both organizations and must follow two codes. Even if you don not have an obligation to follow one of these codes, you may want to choose one to use as a guideline.

### **Limits of a Code of Ethics**

- **Reactive rather than proactive**
- **Conflicts between two codes**

- **Conflicts with customs, personal beliefs**
- **Principles not virtues**
- **Lack of input from individuals whose welfare is at stake**
- **Identify ethical issues and principles**
- **Consult appropriate code**
- **Consult with supervisor/ colleague**
- **Identify legal issues and need for attorney**
- **Develop plan**
- **Implement plan**
- **Document plan**

These are some of the limits of codes of ethics. It is important for us to note that a code is only one part of the decision-making process for these reasons.

It is important to not try to resolve an ethical dilemma by yourself but to use a process that includes other people and other resources. What comments or questions do you have about the process?

Self-reflection is also an important part of the process. The purpose of this is to clarify your own values, self-interest or other personal issues that could contaminate the process. Self-reflection should be part of your first step in identifying ethical issues. The question to ask is “Is this an ethical concern or a personal issue for the counselor?”

For example, consider an adolescent who refuses to sign a release form for her parents. The counselor can address this in several different ways. If it makes her anger to have a client refuse to do something, she may over-react and escalate this into a dilemma. Another approach would be to ask the adolescent her reasons for not wanting to sign as she may have some legitimate concerns regarding parental involvement.

### **Module V: The Client/Counselor Relationship**

Upon completion of this module, participants will be able to:

- Describe four of the primary characteristics of the client/counselor relationship
- Identify the ethical concerns related to these characteristics.
- Utilize an ethical decision-making process in resolving ethical dilemmas in the client/counselor relationship.



### **The Client/Counselor Relationship**

In this module we will continue to integrate the material covered so far and apply it to issues in the client/counselor relationship. We will discuss quotes from professionals in the counseling field and review sections of the NAADAC Code of Ethics, and we will discuss resolution of ethical dilemmas in the client/counselor relationship.

In discussing ethical concerns, we need to first examine the components of an effective counseling relationship. What conditions must occur in order for clients to get what they need?

There are certain characteristics that must exist in the client/counselor relationship for treatment to be effective:

Objectivity, discretion, focus on client's needs, and professional boundaries.

Some of the answers depend on the client and the treatment environment. For the purpose of this training we will look at four essential elements that the counselor needs to provide for the relationship to be effective.

- Objectivity (competence)
- Discretion
- Focus on the client's needs/welfare
- Professional boundaries

**Competence:**

*When clients put their trust in us as professionals, one of their most fundamental expectations is that we will be competent.*

*Kenneth Pope*

We discussed competence earlier as an ethical principle that includes that knowledge, skills and abilities to perform. All codes of ethics include competency as an ethical mandate. However, objectivity is also part of maintaining competence. A counselor may be very knowledgeable and obtain all the appropriate credentials, but a personal bias might prevent that counselor from effectively utilizing the knowledge and skills. Biases can come from personal relationships, such as trying to offer counseling to someone you already know. Biases can also occur from values, prejudices and beliefs counselors hold.

**To be in a powerful position as a counselor and to be carrying cultural biases, without self-awareness, is dangerous.**

*Kenneth Hardy*

The important point in this quote is “self-awareness”. Everyone has values and cultural biases, and to be completely bias-free is unrealistic.

The counselor's ethical response is to be aware of what biases they may possess and formulate a plan to address them.

All codes of ethics include the ethical mandate to not discriminate against race, age, disability, etc. In addition to cultural biases, counselors may have biases against certain types of clients: adolescents, borderline clients, “resistant” clients, and HIV positive clients. These forms of bias will compromise the effectiveness of the counselor client relationship.

Take a few minutes to reflect on clients you have biases about or do not like to treat. Perhaps this may be something to discuss with your supervisor or colleagues as part of an ethical decision making process.

**Discretion:** Discretion was also discussed in the Module on ethical principles.

People are forced into treatment in a variety of ways. Confidentiality safeguards may be signed away by a patient under duress or while still so toxic that they are unable to appreciate the consequences.

*LeClair Bissell*

Clients have an expectation that the counselor/client relationship is private. If a client thought the counselor was going home and telling all his friends and family about what the client revealed, the client would understandably withhold information that might be important for the treatment to be effective. It is the counselors' responsibility to maintain as much privacy as possible in order to ensure this effectiveness, and also to make sure the client understands whatever limits there are to confidentiality.

Client Needs: Attending to the client's needs and welfare also increases the effectiveness of the relationship.

A client who believes their counselor has their best interests in mind is more likely to respond positively to treatment. In applying ethical decision-making to client welfare there are some questions that counselors need to address.

- Who is your client?
- When do they become your client?
- When are they no longer your clients?
- How do you define what is best for clients?

This is especially important for criminal justice professionals as you may decide that your client is society as a whole. This has implications for the individual client who may have a different expectation.

**Boundaries:** Professional boundaries relate to the other three elements we have been discussing.

Boundaries involve remaining objective, using discretion, and maintaining focus on the client's welfare.

The client-counselor relationship is not a mutual relationship that involves both people sharing and helping each other. Clients come to us because they or someone else (such as a spouse or a judge) has decided they need help from a professional. If professional boundaries are violated, treatment effectiveness could be compromised.

### **Dual Relationships**

Dual relationships occur when professionals assume two roles simultaneously or sequentially with a person seeking help.

Most codes of ethics include ethical guidelines regarding dual relationships. Social contact with a client is not the same as a relationship but unethical behavior can occur in a social contact.

#### *Social Contact*

- Accidental meeting
- Infrequent
- Protect integrity of counseling relationship
- 12 step meetings
- Relationship after termination
- Boundary violations

#### *Relationship*

- Planned
- Ongoing
- Mutual
- Self disclosure
- Gifts

## ■ Touch

Sometimes dual relationships are unavoidable. The main concern is that the client is not exploited and that the professional relationship is not compromised.

Dual relationships can cause harm to clients as previously discussed because of the impact on the four essential elements that contribute to the effectiveness of the client/counselor relationship.

Think about the following and the loss of objectivity, confusion about the role of the counselor vs a friend, could discourage future clients, increases distrust in the community, discredits the treatment program and the profession.

- Harm to clients
- Harm to counselor
- Harm to community
- Harm to profession

## **Self-Disclosure Guidelines**

- Benefits the *client*
- Client profile considered
- Informed consent
- Not a *current, unresolved* issue for counselor
- Potential *consequences* considered
- Frequency
- 

*To feel attraction to a client is not unethical:*

*To acknowledge and address the attraction is an important ethical  
responsibility*

*Kenneth Pope*