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**NONPROFITS AND THE LAW:
ETHICAL CONSIDERATIONS FOR
SERVING
ON NON-PROFIT BOARDS;
ETHICS OF CONFIDENTIALITY;
DUTY TO REPORT**

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DISCLAIMER

Nothing contained in this presentation is construed or intended to be legal advice. The information in today's session is for educational purposes only. Any specific examples or answers are not exhaustive nor specific to your organizational needs.

- **Nonprofit:** An entity whose profits (net earnings or income) do not benefit private persons (organizations or individuals), esp. those who control it (i.e., directors or officers).
- **Tax-exempt:** A nonprofit organization that is exempt from one or more federal, state, or local taxes, especially income tax; recognized as exempt from tax under section 501(c) of the Internal Revenue Code (IRC).
- **Charity:** A nonprofit organization that is organized and operated for a **charitable** purpose; recognized as tax-exempt under section 501(c)(3) of IRC.

Among nonprofit organizations, the majority are determined by IRS to fall within IRC section 501(c)(3), termed “public charities”; religious, educational, scientific, literary, and other types fit here.

- Must be organized and operated for an exempt purpose within meaning of 501(c)(3);
- Private inurement is prohibited;
- Lobbying & influencing legislation allowed “insubstantially”;
- Campaign involvement prohibited;
- Must demonstrate public benefit and public support.
- Gifts are deductible on donors’ taxes

Organizations that are not 501(c)(3) may be some other type of tax-exempt organization, depending on their purposes:

- Social Clubs – 501(c)(7)
- Industry groups, Chambers – 501(c)(6)
- Social Welfare, Action organizations – 501(c)(4)
- Veterans' organizations – 501(c)(19)

These organizations have differing requirements.

Gifts to most of these are not deductible on donors' taxes.

- **Exempt purpose** is a purpose that can be found exempt from tax under IRC section 501(c)(3) for charities, or other subsections.
- **How will the nonprofit do its work? Mission** is the focal point of the nonprofit's work, what it intends to do. As such, it will be more explicit and precise than the corporate purpose. For HomePlace, Inc., the mission is "To provide a comfortable, secure shelter for our community's homeless population."

How will the nonprofit do its work?

Activities are the things—tasks, programs, projects--ORG will do to carry out its mission, but each must fit *within* the exempt purpose.

For HomePlace, Inc., its activities might include building and opening the shelter, providing breakfast and evening snacks; making clothing available.

THE ROLE OF THE BOARD AND EXECUTIVES OF NONPROFITS

ROLES:

Management is the body of employees who run the enterprise on a day-to-day basis

The board is charged with an oversight role- direct, review, and assess the actions of management on behalf of the stakeholders

Constructive tension

LEGAL COMPLIANCE AND PUBLIC DISCLOSURE.

Charitable organization must comply with all applicable federal laws and regulations as well as applicable laws and regulations of the states and local jurisdictions in which it is based or operates.

Charitable organizations should adopt a conflicts of interest policy.

Legal compliance is an ongoing process.

EFFECTIVE GOVERNANCE

A charitable organization must have a governing body that is responsible for reviewing and approving:

- The organization's mission and strategic direction,

- Annual budget & key financial transactions,

- Grant practices and policies,

- Conflicts of interest policies,

- Bylaws,

- Fiscal governance policies, and

- Confidentiality policies.

The board should meet regularly to conduct its business and fulfill its duties.

Size/Structure- dependent on the size of the organization.

Constant Education on Responsibilities as Board Members

BOARD DUTIES

The duties of Board Members are:

1. Duty of Loyalty
2. Duty of Care
3. Duty of Obedience

STRONG FINANCIAL OVERSIGHT

The board should institute policies to ensure the organization meets legal requirements for investing and financial responsibilities.

Oversight to ensure compliance with funding of mission of organization and avoid UBIT or report and pay taxes.

Should have strong written policies for paying for expenses

LAWYERS ETHICAL DUTIES

- **Competence/Malpractice**
- **Avoiding the Dual Role**

ETHICS OF CONFIDENTIALITY

- What is the fundamental principle behind the ethics of confidentiality?
- How does maintaining confidentiality contribute to building trust in professional relationships?
- What are some potential dilemmas that can arise when balancing the need for confidentiality with other ethical considerations?
- In what situations might ethical guidelines permit or require the breach of confidentiality?

LICENSURE CONFIDENTIALITY- EXCEPTION

- 1.As mandated by law
- 2.To Prevent a clear and immediate danger to a person or persons;
- 3.Where the licensed professional is a defendant in a civil, criminal or disciplinary action rising from the therapy (in which case client confidences may be disclosed only in the course of that action)
- 4. if there is a waiver previously obtained in writing, and then such information be revealed only in accordance with the terms of the waiver.

LMFT OAC 86:15-3-2; LPC OAC 86:1—3-4-1;

59 O.S. 1376 (PSYCHOLOGISTS- REF)

- 3. Upon the need to disclose information to protect the rights and safety of self or others if:
 - a. the patient presents a clear and present danger to himself and refuses explicitly or by behavior to voluntarily accept further appropriate treatment. In such circumstances, where the psychologist has a reasonable basis to believe that a patient can be committed to a hospital pursuant to Section 5-401 of Title 43A of the Oklahoma Statutes, the psychologist shall have a duty to seek commitment. The psychologist may also contact members of the patient's family, or other individuals if in the opinion of the psychologist, such contact would assist in protecting the safety of the patient,
 - b. the patient has communicated to the psychologist an explicit threat to kill or inflict serious bodily injury upon a reasonably identified person and the patient has the apparent intent and ability to carry out the threat. In such circumstances the psychologist shall have a duty to take reasonable precautions. A psychologist shall be deemed to have taken reasonable precautions if the psychologist makes reasonable efforts to take one or more of the following actions:
 - (1) communicates a threat of death or serious bodily injury to the reasonably identified person,
 - (2) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides,
 - (3) arranges for the patient to be hospitalized voluntarily, or
 - (4) takes appropriate steps to initiate proceedings for involuntary hospitalization pursuant to law,
 - c. the patient has a history of physical violence which is known to the psychologist and the psychologist has a reasonable basis to believe that there is a clear and imminent danger that the patient will attempt to kill or inflict serious bodily injury upon a reasonably identified person. In such circumstances the psychologist shall have a duty to take reasonable precaution. A psychologist shall be deemed to have taken reasonable precautions if the psychologist makes reasonable efforts to take one or more of the following actions:
 - (1) communicates a threat of death or serious bodily injury to the reasonably identified person,
 - (2) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides,
 - (3) arranges for the patient to be hospitalized voluntarily,

59 O.S. 1910

- A. No person licensed pursuant to the provisions of the Licensed Professional Counselors Act shall knowingly and willfully disclose any information the licensee may have acquired from persons consulting the licensee in his professional capacity as a professional counselor or be compelled to disclose such information except:
 - 1. **With the written consent of the client**, or in the case of death or disability of the client, the consent of his personal representative or other person authorized to sue or the beneficiary of any insurance policy on his life, health or physical condition;
 - 2. If the person is a child under the age of eighteen (18) years and the information acquired by the licensed **person indicated that the child was the victim or subject of a crime, the licensed person may be required to testify fully in relation thereto upon an examination**, trial or other proceeding in which the commission of such a crime is a subject of inquiry;
 - 3. If the client **waives the privilege** by bringing charges against the licensed person;
 - 4. When failure to disclose such information **presents a danger to the health of any person**; or
 - 5. If the licensed professional counselor is a party to a civil, criminal or disciplinary action arising from such therapy, in which case any waiver of the privilege accorded by this section shall be limited to that action.
- B. No information shall be treated as privileged and there shall be no privileges created by the Licensed Professional Counselors Act as to any information acquired by the person licensed pursuant to the Licensed Professional Counselors Act **when such information pertains to criminal acts or violation of any law.**
- C. The Licensed Professional Counselors Act shall not be construed to prohibit any licensed person from testifying in court hearings concerning matters of adoption, child abuse, child neglect, battery or matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors on behalf of this client.

10A O.S. 1-2-101 DUTY TO REPORT

- B. 1. Every person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter immediately to the Department of Human Services. Reports shall be made to the hotline provided for in subsection A of this section. Any allegation of abuse or neglect reported in any manner to a county office shall immediately be referred to the hotline by the Department.
- 4. No privilege or contract shall relieve any person from the requirement of reporting pursuant to this section.
- C. Any person who knowingly and willfully fails to promptly report suspected child abuse or neglect or who interferes with the prompt reporting of suspected child abuse or neglect may be reported to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor. Any person with prolonged knowledge of ongoing child abuse or neglect who knowingly and willfully fails to promptly report such knowledge may be reported to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a felony. For the purposes of this paragraph, "prolonged knowledge" shall mean knowledge of at least six (6) months of child abuse or neglect.

ETHICS OF CONFIDENTIALITY- CONT.

- How can professionals ensure that they handle sensitive information in a manner that upholds ethical standards?
- What are the potential consequences of violating the ethics of confidentiality?
- What strategies can organizations employ to educate their employees about the importance of maintaining confidentiality?
- How does digital technology and social media impact the ethics of confidentiality in today's interconnected world?
- Can you provide examples of scenarios where the ethics of confidentiality may conflict with other ethical principles, such as honesty or duty to warn?

DUTY TO REPORT

- What is the significance of the duty to report in maintaining ethical standards?
- In what situations is there a legal or ethical obligation to report certain behaviors or incidents?
- What challenges might individuals face when deciding whether to fulfill their duty to report?
- How can agencies create an environment that encourages employees to fulfill their duty to report without fear of retaliation?
- How does the duty to report align with broader ethical principles, such as accountability and integrity?
- Can you provide examples of scenarios where the duty to report conflicts with other ethical considerations, such as confidentiality or loyalty?
- What protections are typically offered to individuals who fulfill their duty to report?
- What are the potential consequences of failing to fulfill the duty to report, both ethically and legally?
- How has technology impacted the way individuals fulfill their duty to report in recent years?