

Protecting Your Career: Navigating the Top Ethical Violations

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Counseling Institute
CounselingInstitute.org

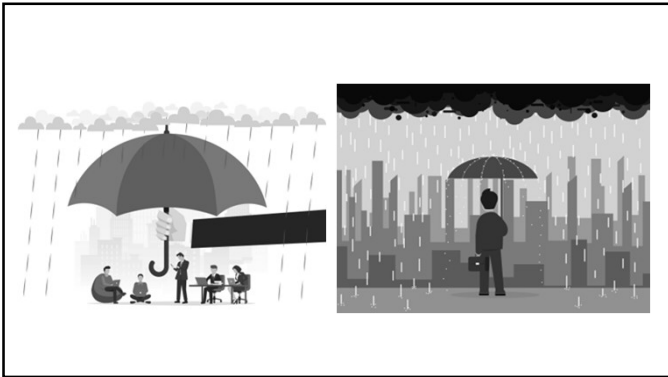
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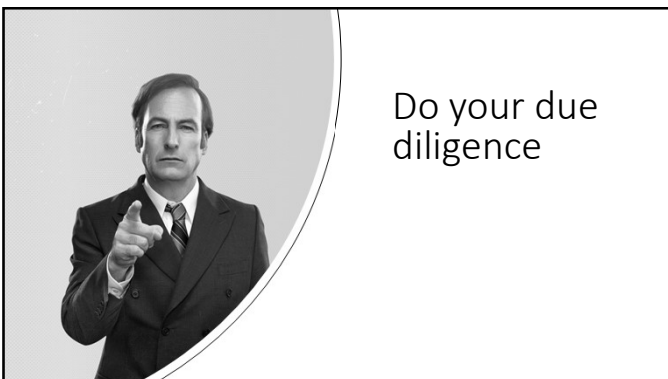
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Settings identified in Counselor Lawsuits

1. Counselor Office Based Setting- 50.8%
2. Mental Health Clinic (non- hospital affiliated)- 14.2%
3. Client's Home- 6.3%
4. Private Group Practice Setting- 4.7%
5. Government Healthcare Facility- 3.2%
- Religious Institution- 3.2%
- Rehabilitation Hospital (inpatient)- 3.2%
- Telecounseling- 3.2%

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Board Complaints

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Board Complaints OBBHL

License	2018	2019	2020
LPC	112	99	74
LMFT	12	2	5
LBP	1	2	2

Personal Communication- Eric Ashmore , Executive Director OBBHL, via email 9-24-2021

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Board Complaints

OBBHL

Dual relationship (both sexual and non-sexual)
Fraud
Forensic testimony

Personal Communication- Eric Ashmore , Executive Director OBBHL via email 9-24-2021

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Board Complaints

OBLADC

License	2018	2019	2020
LADC/ CADC	25	22	14

Personal Communication- Ric Pierson , Executive Director OBLADC via email 12-1-2021

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Board Complaints

OBLADC

Confidentiality
Dual relationship (both sexual and non-sexual)
Substance Abuse
Fraud

Personal Communication- Ric Pierson , Executive Director OBLADC via email 12-1-2021

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Board Complaints OSBLSW

	2019	2020	2021 (as of Oct)
Total Complaints	21	19	17
Resulted in Disciplinary Action	2	2	2
	Dual Relationship, Fraudulent Billing	Chemical Dependency, Domestic Abuse	Dual Relationship, Dual Relationship

Personal Communication- Mark James, Executive Director OSBLSW via email 10-19-2021

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Board Complaints OSBLSW

Confidentiality Violations
Dual Relationships
Fraudulent Billing
Chemical Dependency

Personal Communication- Mark James, Executive Director OSBLSW via email 10-19-2021


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Board Complaints

Confidentiality Violations
Dual Relationships
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HIPAA

Health Insurance Portability and Accountability Act of 1996

U.S. Department of Health and Human Services Office for Civil Rights - hhs.gov/Hipaa

Purpose of HIPAA is to protect client information from fraud and theft

Identifies "Protected Health Information" (PHI)

https://en.wikipedia.org/wiki/Health_Insurance_Portability_and_Accountability_Act#HITECH_Act_Privacy_Requirements

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HIPAA

List of Protected Health Information

- 1.Names (Full or last name and initial)
- 2.All geographical identifiers smaller than a state
- 3.Dates (other than year) directly related to an individual
- 4.Phone Numbers
- 5.Fax numbers
- 6.Email addresses

<https://www.hipaajournal.com/what-is-considered-protected-health-information-under-hipaa/>

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HIPAA

List of Protected Health Information

7. Social Security numbers
8. Medical record numbers
9. Health insurance beneficiary numbers
10. Account numbers
11. Certificate/license numbers
12. Vehicle identifiers (including serial numbers and license plate numbers)

<https://www.hipaajournal.com/what-is-considered-protected-health-information-under-hipaa/>

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HIPAA

List of Protected Health Information

- 13. Device identifiers and serial numbers;
- 14. Web Uniform Resource Locators (URLs)
- 15. Internet Protocol (IP) address numbers
- 16. Biometric identifiers, including finger, retinal and voice prints
- 17. Full face photographic images and any comparable images
- 18. Any other unique identifying number, characteristic, or code except the unique code assigned by the investigator to code the data

<https://www.hipaajournal.com/what-is-considered-protected-health-information-under-hipaa/>

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HIPAA

Notice Provided to Client

Notice of privacy practices for protected health information should be provided to the client in the intake packet.

§ 164.520 <https://www.hhs.gov/sites/default/files/hipaa-simplification-201303.pdf>
Example found at https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/npp_fullpage_hc_provider.pdf

Posted in a prominent place in the office- HIPAA Notice of Privacy Practices Poster may be purchased from Amazon.

Displayed on your website

<https://www.hipaajournal.com/what-is-considered-protected-health-information-under-hipaa/>

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HIPAA Compliant Email and Texting

Authorization to email/text the client should be included in the intake paperwork

Use a HIPAA compliant email/ texting provider.

DO NOT USE REGULAR GMAIL, Yahoo, AOL, ect.



MUST HAVE BUSINESS ASSOCIATE AGREEMENT IN PLACE

<https://www.hipaajournal.com/what-is-considered-protected-health-information-under-hipaa/>

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HIPAA

Business Associate Agreement

"A "business associate" is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, a covered entity".

Must have a Business Associate Agreement (also known as a Business Associate Contract)

Example of a Business Associate Contract-
<https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>

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HIPAA

Business Associate Agreement

Examples of when a Business Associate Agreement is NOT required:

"Disclosures by a covered entity to a health care provider for treatment of the individual. For example:
A hospital is not required to have a business associate contract with the specialist to whom it refers a patient and transmits the patient's medical chart for treatment purposes".

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>

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HIPAA

Business Associate Agreement

Examples of when a Business Associate Agreement is NOT required:

"When a health care provider discloses protected health information to a health plan for payment purposes".
• or health plan premiums.

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>

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HIPAA

Business Associate Agreement

Examples of when a Business Associate Agreement is NOT required:

“When a financial institution processes consumer-conducted financial transactions by debit, credit, or other payment card, clears checks, initiates or processes electronic funds transfers, or conducts any other activity that directly facilitates or effects the transfer of funds for payment for health care”, or health plan premiums.

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>

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HIPAA

Reporting a Breach

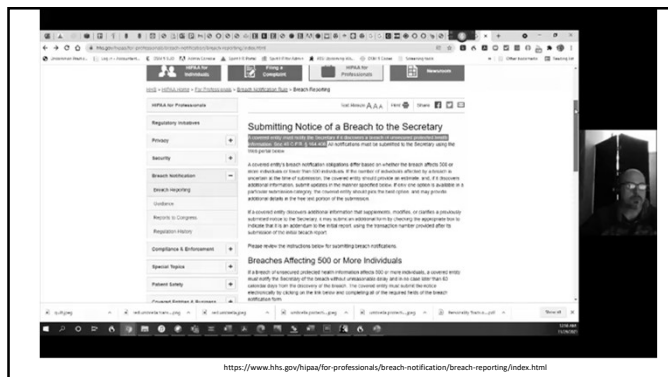
A covered entity must notify the Secretary if it discovers a breach of unsecured protected health information within 60 days-

§ 164.408.

Must notify the client within 60 days of the breach by first class mail and/or email- § 164.404 or health plan premiums.

<https://www.hhs.gov/hipaa/for-professionals/breach-notification/breach-reporting/index.html>

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<https://www.hhs.gov/hipaa/for-professionals/breach-notification/breach-reporting/index.html>

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HIPAA

“Wall of Shame”

https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf

“A 2018 study published in *JAMA Internal Medicine*, analyzed 1,138 breaches posted to The Wall of Shame. Interestingly, over half of the breaches were caused by employee mistakes or neglect (53%). Examples of a company’s internal HIPAA breaches were mistakes handling emails containing PHI and employees accessing PHI without authorization. Interestingly, only 32.5% of the breaches were caused by theft from outside the organization.”

<https://telehealth.org/hipaa-wall-of-shame/>

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HIPAA Resources

U.S. Department of Health and Human Services Office for Civil Rights - [hhs.gov/hipaa](https://www.hhs.gov/hipaa)

Combined Regulation Text of All Rules- <https://www.hhs.gov/sites/default/files/hipaa-simplification-201303.pdf>

HIPAA Guidance Materials- <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/index.html>

HIPAA Journal- hipaajournal.com

Person Centered Tech- personcenteredtech.com

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Board Complaints

Confidentiality Violations
Dual Relationships
Fraudulent Billing

Personal Communication- Mark James, Executive Director OSBLSW via email 10-19-2021

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Dual Relationship

- means a familial, social, financial, business, professional, close personal, sexual or other non-therapeutic relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LPC's or LPC Candidate's professional obligation to a client.

Oklahoma LPC Rules 86:10-1-2

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Prior Association

- LPCs shall not undertake to provide counseling to any person with whom the LPC has had any prior
- sexual contact
- or familial, social,
- financial, business,
- professional,
- close personal,
- or other non-therapeutic relationship with a client...within the previous...

five (5) years.

Oklahoma LPC Rules 86:10-3-3 (d)
Oklahoma LMFT Rules 86:15-3-1(d)

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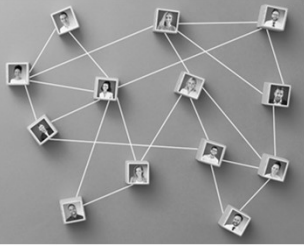
The counselor did not know the client before



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The counselor did not know the client before

Who do you know?



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The counselor did not know the client before



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The counselor did not know the client before



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The counselor did not know the client before



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The counselor did not know the client before



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If the dual relationship cannot be prevented

- ...or eliminated and the LPC cannot readily refer the client to another counselor then the counselor will:
- (1) Fully disclose the circumstances of the dual relationship to the client and secure the client's written consent to continue providing counseling;
- (2) Consult with the other professional(s) to understand the potential impairment to the LPC's professional judgment and the risk of harm to the client of continuing the dual relationship.

Oklahoma LPC Rules 86:10-3-3 (c)

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Sex with a current or former client?

NEVER- LPC, LMFT, LADC, LCSW.

Oklahoma LPC Rules 86:10-3-2 (h)
Oklahoma Social Work Rules 675:20-1-4 (d)
Oklahoma LADC Rules 38:10-3-2

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What do you do if you find out another counselor had sex with their client?

• The LPC must report to the board within...

30 days.

- Provide the name of the LPC, or Candidate, and any known facts.
- Must maintain client confidentiality unless a release has been signed by the client.

Oklahoma LPC Rules 86:10-3-2 (h)

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Social Media Tips for Professional Counselors

Make sure your professional social media accounts are separate from your personal accounts. It's a good idea to keep your personal accounts private (ACA Code of Ethics H.6.a.).

Learn everything you can about social media. Be sure you understand the various platforms' purposes and operations, including their privacy controls (H.1.a.).

Don't share confidential information on social media, even in closed/private settings. Non-professionals may have access to that information (H.6.d.).

Don't check out a client's social media profile without permission, even if it is public (H.6.c.). Keep in mind that personal virtual relationships with current clients are prohibited (A.5.e.).

Social Media: 10 Tips for Professional Counselors https://www.counseling.org/docs/default-source/ethics/10-social-media-do-s-and-don-ts-for-professional-counselors.pdf?sfvrsn=1986572c_2

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Social Media Tips for Professional Counselors

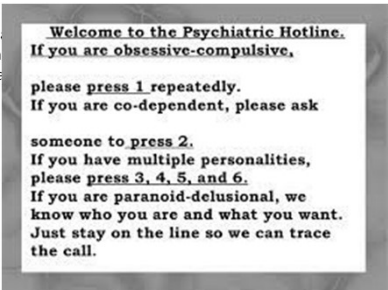
If you wouldn't say it in real life, don't post it online. Your statements have weight (C.6.c.). Keep in mind that values and beliefs shared online can make their way to clients, employers, counseling education programs, membership organizations, and other professionals.

Social Media: 10 Tips for Professional Counselors https://www.counseling.org/docs/default-source/ethics/10-10-social-media-do-s-and-don-ts-for-professional-counselors.pdf?sfvrsn=1986572c_2

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Social Media Tips for Professional Counselors

1. "...according to the American Counseling Association Code of Ethics clinicians may not solicit reviews and testimonials from current or former clients. However, as Roy Higgins points out in his article on ethical review solicitation, clinicians can ask colleagues and coworkers to leave reviews about their professionalism."

2. Don't Comment on Clients' Comments

Oklahoma Counseling Institute- 7 Things LPCs Should Consider when Marketing Mental Health Services, Hayley Twyman-Brack https://ecpd.memberclicks.net/index.php?option=com_dailyplanetblogview=entry&year=2021&month=09&day=20&id=267-things-lpcs-should-consider-when-marketing-mental-health-services

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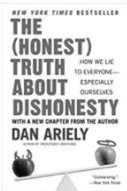
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Dan Ariely "The (Honest) Truth About Dishonesty" (2012)



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The "Fudge Factor"

"it is the delicate balance between the contradictory desires to maintain a positive self- image and the desire to benefit from cheating"



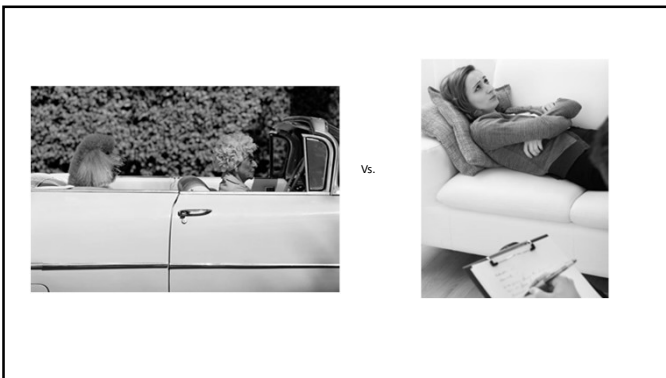
Normal

Socially Reinforced

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The "Fudge Factor"- Ariely



Small unethical behaviors lead to increased unethical behaviors

Welsh, D. T., Ordóñez, L. D., Snyder, D. G., & Christian, M. S. (2014, May 26). The Slippery Slope: How Small Ethical Transgressions Pave the Way for Larger Future Transgressions. *Journal of Applied Psychology*.

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In the past five years the Oklahoma Medicaid Fraud Control Unit (MFCU) has recovered over \$91 million for the Medicaid program and acquired over 126 criminal convictions in fraud and abuse cases.

<https://www.oag.ok.gov/medicaid-fraud-control-unit>

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Terms to NOT use

“Specialize” or “Specialty”

“Specialize” or “Specialty”

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Terms to NOT use
"Doctor"

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Terms to NOT use
"Psychological Evaluation"

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