

# When Legal and Ethical Obligations Conflict

Critical Thinking and Collaborative Conversations to  
Manage Challenging Issues in Social Work Practice

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\* All images are from Microsoft PPT

# Agenda

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- 🔑 Intro: Key Terms
- ⚖️ Framework for Managing Ethical Issues
- 🔨 Legal-Ethical Conflict Situations
- 🧠 Moral Courage
- ❓ Questions
- ✅ Conclusion



# Introduction: Key Terms

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## Laws - Guidelines for behavior...

- Enacted by the state
- Enforced by the state
- May or may not be ethical

## Ethics - Guidelines for professional behavior...

- By consensus of profession
- Might be enforced by state, by profession, by employers, or by individuals
- “good” behavior even if not enforceable

# Ethical versus Legal

	Legal	Illegal
Ethical	A. Ethical and Legal	B. Ethical but illegal
Unethical	C. Unethical but legal	D. Unethical and Illegal

# Guidance from the NASW COE

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“Instances may arise when social workers’ ethical obligations conflict with agency policies or relevant laws or regulations. When such conflicts occur, social workers must make a responsible effort *to resolve the conflict in a manner that is consistent with the values, principles, and standards expressed in this Code*. If a reasonable resolution of the conflict does not appear possible, social workers should seek *proper consultation* before making a decision.”

Purpose section

# Language is Important

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# Framework for Managing Ethical Issues

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1. Identifying Ethical Issue(s)
2. Determining Appropriate Help
3. Critical Thinking
4. Conflict Resolution
5. Planning and Implementation
6. Evaluation and Follow-Up

\* Loop back as needed Barsky, 2023

# Think Critically: Approaches to Critical Thinking

COE, agency  
policy, laws

**Legalism**

**Deontology**

Principles,  
categorical  
imperatives,  
acts, intent

Moral  
qualities,  
being rather  
than doing

**Virtue  
Ethics**

**Teleology**

Options,  
consequences,  
greatest good



# Collaborative Conversations

- Transform conflict to joint problem-solving
- Open to feedback and other options
- Listen - actively, empathically
- Brainstorm
- Build on each other's ideas
- Acknowledge areas of disagreement - respectfully
- Seek consensus

# Situation: SW as Attorney's Consultant

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- Shira (SW) interviews a client to help an attorney prepare for a divorce case
- Shira suspects child abuse by client
- Shira advises attorney that she is a mandated reporter and that her COE makes child abuse an exception to confidentiality
- Attorney advises Shira that under the “work-product doctrine” information she gathers is subject to attorney client privilege
- Assume that in this state, attorneys are not mandated reporters
- Shira feels it is unethical not to report (needs to protect child)

# Situation: Clinician in Court

- Stephan (LCSW) has been providing psychotherapy to a client accused of armed robbery
- Stephan is subpoenaed by state prosecutor to testify
- Client does not want Stephan to testify
- Upon appearing in court, judge orders Stephan to testify
- Ethically, Stephan believes he should maintain confidentiality
- Could go to jail for contempt of court



# Situation: Abortion Care

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- Stephanie (LCSW) is working with a client who requests assistance with having an abortion
- Client is at least 8 weeks pregnant
- State has a ban on abortions after heartbeat is detected
- State allows private citizens to sue for \$10,000 (“bounty”) against anyone assisting with an abortion after fetal heartbeat detected
- Stephanie believes in client self-determination
- They consider a medication abortion or abortion in other state
- Stephanie is concerned about lawsuits and losing her license

# Situation: Gender- Affirming Care

Family with 12-year-old who identifies as transgender

Family asks Spencer (LCSW) for assistance in obtaining hormone blockers (“WPATH letter” for endocrinologist)

State law bans minors from having hormone blockers

Spencer has contacts in other states to facilitate access to hormone blockers

# Situation: Lesbian Student

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- School SW meets a student (16) who says she is lesbian but does not want her parents to know
- State law requires school SWs to obtain parental consent parents before providing services
- State law requires School SWs to inform parents if a student reports that they are LGBT

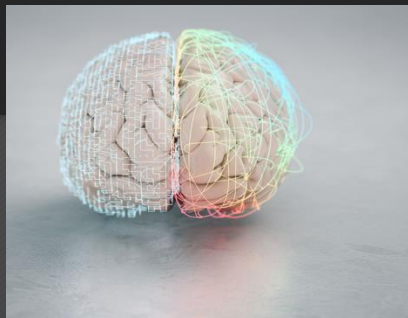


# Situation: Homicidal Ideation

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- Sarla's client presents with homicidal ideation (acute risk)
- State law requires Sarla to report situation to the intended victim
- Sarla believes client needs to be in a secure mental health facility
- Client refuses to be admitted and directs Sarla not to inform the intended victim
- Sarla believes in client self-determination, but also protection of others from serious, imminent harm
- What is the nature of the legal-ethical conflict, if any?

# Situation: Artificial Intelligence



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State law requires you to use AI to determine a client's eligibility for Medicaid benefits

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You are aware that the AI program has biases against particular ethnic and racial groups

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You want to follow the law and you also want to be fair to the clients you serve



# Situation: Community Organizing

- Cailen (BSW) is working with a community group that is concerned about the separation of children and parents seeking refugee status at the border
- The group wants to block traffic at the border as an act of civil disobedience
- Cailen (BSW) believes in the cause but has concerns about legal consequences

# Situation: Small Community

- Praba is the only probation officer in a small community
- One of Praba's nephews has been convicted of trafficking and is referred to Praba
- Both Praba's COE and laws governing her job state that she should not engage in dual relationships with clients
- There is a court order, however, stating that she is to be her nephew's probation officer

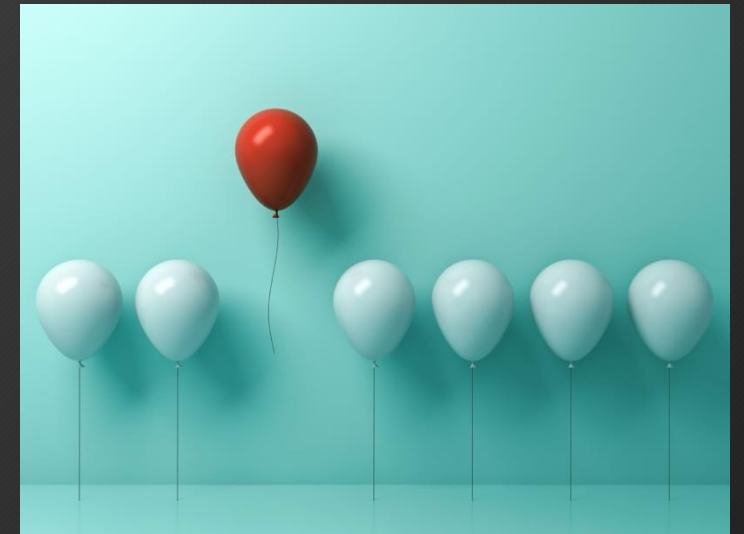


# Moral Courage

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The strength to do what is right even when there are risks of doing so

- Legal consequences for violating a law
- Responses from agency / supervisor
- Responses from co-workers / community



# Moral Courage: Nurturing a virtue

- Reflect on your values, convictions
- Develop culture of ethics in your organizations
- Connect with others with shared values
- Practice every day (not just as a SW)
- Make prudent choices (assess, consider options, consult, maximize benefits, manage risks)



# Participation

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Questions

Scenarios  
to discuss

Other  
situations

## Conclusions: Short- and Long-Term Strategies for Managing Ethical-Legal Issues

Know and apply	relevant laws, ethical standards
Consult	supervisors, SW colleagues, attorneys, advocates (LGBTQ, women's, kids')...
Seek	“elegant” options and solutions
Consider	out-of-state solutions
Weigh	consequences of violating a law or ethic
Advocate	for change: statutes, cases, regulations, agency policy
Educate	clients, legislators, and the public

## And document....

- Nature of issue
- Relevant facts
- People consulted
- Laws, policies, and ethical standards considered
- Courses of actions considered
- Ethical reasoning
- Option selected
- Rationale
- Implementation steps planned and taken
- Additional concerns that arose and how handled

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