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Ethics in Rehabilitation

A Clinical Perspective for Therapists

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Learner Outcomes

After this course, participants will be able to:

- Identify at least three principles of ethics and their application to rehabilitation and physical therapy.
- Identify at least three codes of ethics that govern discipline-specific therapy practice.
- Discuss procedures for analyzing ethical dilemmas in healthcare.
- Correctly apply Code of Ethics to real world issues through case scenarios.
- Identify common ethical issues experienced in healthcare settings.

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Principles of Ethics

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Autonomy

- Moral right to make choices and decisions about a course of action
- Allowing and enabling patients to make their own choices
- Desire to “help people” sometimes results in diminished respect for autonomy

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Nonmaleficence

- Do no harm
- Harm encompasses a range extending beyond physical or psychological harm including harm to reputation, liberty or property.
- Our opinions regarding “harm” may differ from our patients

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Beneficence

- Duty to prevent harm to others, remove harm from others and promote good
- Obligation ends where action can bring harm to oneself
- Looking out for the patient’s well-being
- Patients and therapists may have differing views on what is good for the patient

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Justice

- Fairly distributing burdens and benefits in society
- Focus on who should get the resources
- Justice and fairness in ethics depend on contextual factors that can influence choices and decisions

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Informed Consent and Veracity

- Present patients with details, benefits, risks and potential risks of proposed interventions
- Consent is based on specific information
- Consent relies on veracity -- obligation to speak and act truthfully

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Confidentiality

- Obligation to limit access to information gathered in the course of treatment
- Keep information strictly between the therapist and the patient
- Certain laws mandate breach of confidentiality to protect citizens

9

Fidelity

- Moral duty to keep promises and commitments
- Patients expect therapists to keep explicit and implicit promises

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Duty

- Obligations to others in society
- Duties exist because of the nature of the relationship between the parties

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Rights

- Ability to take advantage of a moral entitlement to do something or not to do something
- Patient's Bill of Rights
- Federal statutes (e.g., HIPAA)
- Facility-specific bill of rights

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Paternalism

- Failure to respect autonomy; acting with disregard to individual rights
- Substituting one's beliefs, opinions, judgments for the patient's
- Attempt to justify by claiming they acted in the person's best interests

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Codes of Ethics

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Professional Ethics

- Incorporates values, principles and morals into professional decision making
- Professions try to instill their own values to avoid and prevent unwanted professional behaviors
- Utilize training and professional obligations as a source of ethical values
- Professional codes of ethics used to guide behavior

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Codes of Ethics

- Incorporate sets of rules or principles intended to express the particular values of the profession as a whole
- Licensing boards/credentialing agencies incorporate professional codes of ethics into licensure regulations or credentialing rules

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Codes of Ethics

- Promote basic tenets of a profession
- Codify fundamental beliefs of the professions and the common moral values the profession chooses to protect patients and clients from harm
- Meaning to the uniqueness of what therapists do
- Create a bond between professionals
- Provides the basis for the meaning of what it means to be a member of a particular profession
- Values to incorporate into moral and behavioral repertoire

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Codes of Ethics

- Measure of proper professional behavior
- Standard of care to be rendered
- Rarely does a code of ethics provide an absolute guide to behavior/decision making
- Code is a starting place or point of reference

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Unethical Practice

- Practice that does not comport to established professional standards
- Practice that ranges from unreasonable, unjustified and ineffective to immoral, questionable and knowingly harmful or wrong
- Unethical practice affects the patient, the therapist, the facility/company, insurance providers (e.g., Medicare), society, etc.

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APTA Code of Ethics for Physical Therapy Personnel

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Purpose

- Define ethical principles
- Provide standards of behavior and performance
- Provide guidance for ethical challenges
- Educate individuals regarding core values, ethical principles and standards
- Establish standards for judging unethical conduct

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Code of Ethics

- Built upon five roles of the PT, core values of the profession and multiple realms of ethical action
- Guided by core values:
 - Accountability
 - Altruism
 - Compassion/caring
 - Excellence
 - Integrity
 - Professional duty
 - Social responsibility

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Principle #1

Physical therapists shall respect the inherent dignity and rights of all individuals

Core Values: Compassion, Integrity

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Principle #2

Physical therapists shall be trustworthy and compassionate in addressing the rights and needs of patients

*Core Values: Altruism, Compassion,
Professional Duty*

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Principle #3

Physical therapists shall be accountable for making sound professional judgments

Core Values: Excellence, Integrity

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Principle #4

Physical therapists shall demonstrate integrity in their relationships with patients, families, colleagues, students, research participants, other health care providers, employers, payers, and the public

Core Value: Integrity

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Principle #5

Physical therapists shall fulfill their legal and professional obligations

Core Values: Professional Duty, Accountability

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Principle #6

Physical therapists shall enhance their expertise through the lifelong acquisition and refinement of knowledge, skills, abilities, and professional behaviors

Core Value: Excellence

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Principle #7

Physical therapists shall promote organizational behaviors and business practices that benefit patients/clients and society

Core Values: Integrity, Accountability

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Principle #8

Physical therapists shall participate in efforts to meet the health needs of people locally, nationally, or globally

Core Value: Social Responsibility

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Licensure

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Licensure

- Standard of conduct for therapists
- States control licensure through laws and regulations
- Requirements vary from state to state
- Licensure laws prescribe the type of behavior therapists must follow
- Minimum standards for licensure and requirements to ensure competent practice

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Licensure

- Penalties for those who participate in the behaviors they prohibit
- Disciplinary actions refer to the process of assigning penalties for unacceptable behaviors
- Penalties range from fines to suspension or revocation of a license
- Every practitioner should read their licensure law

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Behaviors Subject to Disciplinary Action

- Abuse of drugs or alcohol
- Conviction of a felony
- Conviction of a crime of moral turpitude
- Conviction of a crime related to therapy practice
- Practicing without a prescription or referral
- Practicing outside the scope of one's practice or using interventions for which one is not certified or trained
- Obtaining a license using fraud or deception

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Behaviors Subject to Disciplinary Action

- Gross negligence in practicing therapy
- Breaching patient confidentiality
- Failing to report a known violation of the licensure law by another licensee
- Making or filing false claims or reports
- Accepting kickbacks
- Exercising undue influence over patients
- Failing to maintain adequate records

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Behaviors Subject to Disciplinary Action

- Failing to provide adequate supervision
- Providing unnecessary services
- False, deceptive, misleading advertising
- Practicing under another name
- Failure to perform a legal obligation
- Practicing medicine when you are not a physician

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Behaviors Subject to Disciplinary Action

- Performing services not authorized
- Performing experimental services without informed consent
- Practicing beyond scope permitted
- Failure to comply with CE requirements
- Failure to notify the licensing board of an address change
- Inability to practice competently

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Fraud and Abuse

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Abuse

- Other laws impose legal duties and obligations upon health care professionals
 - For example, reporting suspected abuse.
- Legal requirement to report abuse is an exception to a confidentiality requirement

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Fraud

- Often occurs in the context of billing/documentation
 - Billing for services never provided
 - Billing for more services than were provided
 - Billing for non-covered services
 - Backdating
 - Fabricating notes for visits never made

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Medicare Fraud and Abuse

- Fraud: Provider of therapy services knowingly or willingly lies in order to get paid
- Abuse: Medicare pays for an item or service it should not or any time a provider bills Medicare for services not medically necessary
- Office of Inspector General (OIG) fights Medicare fraud and abuse through task forces and audits
- Failure to report illegal activity may result in federal criminal charges of conspiracy

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Acts Prohibited by Medicare

- Making false claims for payment
- Making false statements for payment
- Billing for visits never made
- Billing for non-face-to-face therapy services
- Billing for one-to-one visit when group/concurrent therapy services were provided

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Acts Prohibited by Medicare

- Billing for therapy services not provided by a licensed provider
- Billing for therapy codes that reimburse at a higher rate than the code provided
- Paying or receiving kickbacks for goods and services
- Soliciting for or paying/receiving payment for referrals

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HIPAA

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What is HIPAA?

- **The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that:**
 - Protects the privacy of patient health information
 - Provides for the electronic and physical security of patient health information
 - Prevents healthcare fraud and abuse
 - Simplifies billing and other transactions, reducing health care administrative costs
 - Gives patients rights over use and disclosure of their health information
- **HIPAA Privacy Rule:**
 - Sets standards on maintaining the privacy of Protected Health Information, or PHI
- **HIPAA Security Rule:**
 - Requires the security of electronic forms of PHI, or e-PHI
 - Defines the standards to implement safeguards to protect e-PHI

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Does HIPAA Apply to Me?

- HIPAA requires that providers train all workforce members about our HIPAA policies and procedures that may affect the work that you do. These rules apply to you when you look at, use, or share Protected Health Information (PHI).
- The HIPAA law applies to “Covered Entities”
 - Healthcare Providers
 - Health Plans: Medicare, Medicaid, Insurance plans
 - Clearinghouses for electronic billing
- HIPAA also applies to Business Associates - the organizations that use and disclose health information to provide services to Covered Entities

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What Information Must Be Protected?

- Protected Health Information (PHI) is information related to a patient's past, present or future physical and/or mental health or condition
- PHI can be in any form: written (soft charts), spoken (hallway discussion), or electronic (email, Casamba, Optima Health records)
- PHI is any health information with identifiers. PHI must include at least one of the 18 personal identifiers in association with health information. Examples of identifiers:
 - Name, Postal Address, Social Security Number
 - Medical Record Number, Health Plan Beneficiary Number
 - Full face photographic images/ any comparable images
 - All elements of dates except year (birth date, discharge date)

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Patient Rights Under HIPAA

- Right to **access** their own medical records
- Right to **request to amend or correct** their records
- Right to an **accounting** of PHI disclosures
- Right to **request a restriction** limiting access by others to their records
- Right to **request confidential communications** of their health information
- Right to **file a complaint** if they believe their privacy rights have been violated

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How Can We Use and Share Patient Information?

- **Treatment (T):** Physicians, nurses, therapists and other providers may access a patient's record for treatment. Health information may also be shared with other health care providers outside of the facility to decide on the best treatment or to coordinate care
- **Payment (P):** Health information is shared with Medicare, Medicaid, insurance plans and other payers for claims payment and benefits determination
- **Operations (O):** Health information is used for quality assurance, training, and audit purposes
- **For Purposes Other Than TPO:** Unless required or permitted by law, must obtain written authorization from the patient to use, disclose, or access patient information

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Except for Treatment, the Minimum Necessary Standard Applies

- For patient care and treatment, HIPAA does not impose restrictions on use and disclosure of PHI by health care providers. Exceptions: psychotherapy information, HIV test results, and substance abuse information
- For anything else, HIPAA requires users to access the "minimum necessary" amount of information necessary to perform their duties, and only disclose to those that have a need to know
- *You may not discuss any patient information with anyone unless required for your job*

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HIPAA Security Rule Safeguards

- The HIPAA Security Rule requires Administrative, Physical, and Technical safeguards be established
 - Administrative: Appoint Security Officer, provide security training, develop policies/procedures
 - Physical: Protect the physical system and equipment (data backup, proper storage and disposal)
 - Technical: Ensure protection of health information and its transmittal (unique user ID, a strong password, automatic logoff from system)

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Keeping Health Information Secure is Part of Your Job

- | | |
|-------------------------------|--------------------------------------|
| ▪ Secure Faxing | ▪ Computer Security |
| ▪ Safe Emailing | ▪ Know where you left your paperwork |
| ▪ No texting of PHI | ▪ Removal of Records |
| ▪ Safe Internet use | ▪ Storage of Records |
| ▪ Password Protection | ▪ Building Access |
| ▪ Conversations | ▪ Verification of Requests |
| ▪ Therapy Department Security | ▪ Sharing PHI |
| ▪ Social Media | ▪ Disclosure of PHI |
| ▪ Discarding Papers | |

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Fines and Penalties

- HIPAA Criminal Penalties:
 - \$50,000 - \$1,500,000 fines
 - Imprisonment up to 10 years
- HIPAA Civil Penalties: \$100 - \$25,000 / year fines
- More fines if multiple year violations
- State Laws: Many states have also enacted medical information privacy laws! For violations, fines and penalties may apply to individuals as well as healthcare providers. Imprisonment and action against your professional license may also apply.
- Corrective and disciplinary actions, up to termination of employment

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Resident Rights and Elder Abuse

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Resident Rights

- The Right to Be Fully Informed
 - Available services, charges, facility rules, regulations, rights, Ombudsman information, state survey, room changes
- Right to Complain
 - Present grievances without fear of reprisal, prompt efforts to resolve
- Right to Participate in One's Own Care
 - Receive adequate care, informed of medical condition changes, participate in care planning, treatment, discharge

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Resident Rights

- Right to Privacy and Confidentiality
 - Private communication, privacy during treatment and care
- Rights During Transfers/Discharges
 - Receive 30-day notice which includes the reason, effective date and location
- Right to Dignity, Respect and Freedom
 - To be treated with consideration, respect, dignity and be free from abuse

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Resident Rights

- Right to Visits (or refuse visits)
 - By a personal MD, state surveyor, relatives, friends, organizations
- Right to Make Independent Choices
 - Make personal decisions regarding accommodations, MD, community activities, financial affairs

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What is Your Role?

- Know the rights of your residents
- Protect dignity and privacy
- Speak respectfully and positively
- Allow residents to make choices
- Respect a resident's right to refuse
- Listen to concerns

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Elder Abuse

- Growing geriatric concern
- Health and social system breakdown
- Look beyond protective services records and examine financial, medical, social, and long-term care areas for possible difficulties and solutions

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Elder Abuse and Prevention

Acts of omission or commission by a person who stands in a trust relationship that result in harm or threatened harm to the health and/or welfare of an older adult

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Forms of Abuse

- Physical abuse
- Sexual abuse
- Emotional abuse
- Neglect
- Abandonment
- Financial exploitation
- Self-neglect

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Elder Abuse Indicators

- **Physical Abuse.** Sprains, dislocations, fractures, or broken bones. Burns, internal injuries, abrasions, bruising. Injuries are unexplained or explanations are implausible.
- **Sexual Abuse.** Fear of being touched/inappropriate modesty on evaluation. Inner thigh/breast bruising, tenderness.
- **Emotional Abuse.** Depression, sleep and appetite disturbances, decreased social contact, loss of interest in self, apathy and suicidal ideation. Evasiveness, anxiety, hostility.
- **Neglect and Self-Neglect.** Inadequate, dirty or inappropriate clothing, malnutrition, dehydration, odor and poor hygiene, pressure sores. Misuse/disregard/absence of medicines, medical assistive devices, medical regimens.
- **Self-Neglect.** Eccentric or idiosyncratic behavior, self-imposed isolation, marked indifference.
- **Financial Abuse.** Fear, vague answer, anxiety when asked about personal finances. Disparity between assets and appearance and general condition. Failure to purchase medicines, medical assistive devices, seek medical care or follow medical regimens.

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The Elder Justice Act

- **You** have a duty to report any suspected acts involving resident mistreatment, neglect, abuse, crimes, misappropriation of resident property, or injuries of unknown source.
- The facility must report any reasonable suspicion of a crime against a resident or patient to:
 - the Secretary of the U.S. Department of Health and Human Services (HHS), and
 - the law enforcement authorities in the political subdivision where the facility is located.

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The Elder Justice Act – Time Periods to Report

- If the events that cause the suspicion of a crime:
 - Result in “serious bodily injury”, the report by the facility must be made to HHS and to law enforcement authorities immediately, but not later than *two hours* after forming the suspicion.
 - Do not result in “serious bodily injury”, the report must be made by the facility to HHS and to law enforcement authorities not later than *24 hours* after forming the suspicion.
- “Serious bodily injury” is an injury
 - involving extreme physical pain or substantial risk of death;
 - involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or
 - requiring medical intervention such as surgery, hospitalization, or physical rehabilitation

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Legal Issues

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Malpractice

- Most claims surround negligence
- Negligence occurs when the therapist's conduct falls below the acceptable standard of care
- Negligence concerns itself with conduct, not state of mind

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Negligence

- Four elements
 - A relationship between the parties must exist that creates a duty to act in a particular way
 - Conduct fell below the professionally reasonable standard of care
 - The breach of the standard of care caused the damages suffered
 - Person must prove he/she suffered harm

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Discrimination Laws

- Legal and ethical issues in relation to patient and student issues
- Cannot discriminate based on age, race, disability, religion, sexual orientation, etc.

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Whistleblowing

- The term “whistleblower” is used to describe a person who exposes an activity that is deemed illegal, unethical, or incorrect
- Ethical obligation to act as a whistleblower
- Decide who to report the incident to
- State and organizational whistleblower laws
- Most protect against retaliation

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Mandatory Reporting

- As state-licensed healthcare workers, PTs are considered mandatory reporters
- All 50 states have specific guidelines
- Abuse that PTs are required to report may vary from state to state
- Each state will have its own unique language and requirements for reporting

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Common Ethical Issues

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Common Ethical Issues

- Documentation lapses
- Employer demands
- Use and supervision of support personnel
- Impaired practitioners
- Student supervision

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Common Ethical Issues Student Supervision

- Patient welfare must come first
- Cannot delegate clinical decision making
- Must inform client of qualifications/credentials
- Increase supervision based on knowledge, experience, competence
- Document amount of supervision
- Protect client confidentiality
- Unethical for therapists to sign for clinical hours they did not supervise

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Common Ethical Issues Confidentiality

- Records management, storage, ownership, retention
- Information exchanged
- Disclosure/release of information
- Access to records
- Exchange of records between professionals

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Common Ethical Issues Client Abandonment

Examples of misconduct

- Failing to give sufficient notice
- Failing to provide an interim plan
- Failing to complete paperwork
- Withholding paperwork
- Removing materials or records
- Maligning the facility or organization
- Recruiting clients

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Common Ethical Issues Reimbursement for Services

- Misrepresenting information to obtain reimbursement
 - Accurate documentation is required
 - Must remain current with payer policies
- Providing service when there is no reasonable expectation of significant benefit
 - Cannot provide services when the prognosis is too poor to justify therapy
 - Cannot exaggerate extent of improvement to obtain reimbursement

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Common Ethical Issues Reimbursement for Services

- Scheduling services not reasonably necessary
 - Must be based on clinical need
- Providing more hours of care than can be justified
 - Must be based on clinical need
- Providing complimentary care or discounted care
 - Fee alterations are not provided based on referral sources or personal relationships

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Common Ethical Issues Therapy with Children

- Promoting the child's best interests in complex and resource-poor home and social settings
- Managing the therapeutic alliance with parents and caregivers
- Protecting privacy and confidentiality, sharing medical information appropriately, adolescent care issues

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Keep in Mind

- Ethical issues are the same regardless of payer
- Consider evidence-based practices
- Document quantifiable and measurable changes
- Follow best clinical judgment
- Present information accurately

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Resolving Disputes

- Examine the Situation
 - Consider whether you know or can obtain all the facts
 - For example, obtaining documents or contacting individuals with first-hand knowledge
 - Knowing all of the facts may impact how you proceed

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Resolving Disputes

- Review Laws, Rules, and Regulations
 - Licensure
 - Federal laws, rules, and regulations
 - State practice acts
 - Core Ethics Documents/Codes of Ethics
 - Professional associations

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Resolving Disputes

- Contacting a Third Party?
 - Talk with your colleague
 - Advice of counsel
 - Employer grievance department or compliance hotline
 - Filing a complaint
 - Other third party agencies
 - Professional association ethics processes

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Issues Affecting Elderly

- Lack of resources
- Scarcity of providers
- Financial barriers
- Cultural barriers and biases

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Cultural Biases

- Examine these biases and change them in daily practice
- Stereotyping is common
 - Examine your own beliefs and values about aging
 - How do you react to bias or stereotyping?

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Cultural Biases

- Values and beliefs impact care
 - What care is provided, when, where, why, and how it is provided
 - E.g., frail elderly stereotype may mean we do not provide necessary therapy
- Therapists must treat with respect, dignity, worth, individual uniqueness, unrestricted by social/economic status, personal attributes, or nature of health problems.

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End of Life Wishes

- Decision to treat against the wishes of the dying person
- Family or other health care staff may persuade us to prolong or start a treatment expressly against the wishes of the dying person
- Do we ask what kind of care the dying person wants?

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End of Life Wishes

- Often families express conflicting statements
- Complicated by staff opinions/values
- Primary commitment is to the patient, whether an individual, family, group or community
- Second duty is to the family
- We are patient advocates

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Lifestyle Choices

- Ethical questions can be raised about individual client responsibility and preference about lifestyle choices
 - Do we discuss choices about exercise, religious beliefs, or cognitive activities?
 - Screen for depression, functional change, or cognition changes, or do we wait to do these screens until symptoms become problematic?

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Lifestyle Choices

- Commonly voiced beliefs, biases, and stereotypes, make health promotion harder to implement
- Health promotion is seen as easier to set aside than other health care
- Elderly have chronic conditions linked to lifestyle choices that do not include positive health promotion activities

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Accountability

- To the patient or to the family?
- Must view this in light of environment and situational diagnosis
- Weigh burden on the patient, how it affects the family, and exercise judgment, based on both sides of the problem
 - Priority may be given to the family's needs in some cases

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Accountability

- How far is a family obligated to respond to demanding care?
- Is there rejection of responsibility?
- Must have appraisal of clinical and social facts to make these decisions

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Entering a SNF

- Disparity between views
- Paternalism contradicts autonomy
- Must discuss decisions with the client in detail and make the decision best for the client and the family

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Legal Incompetence

- Actual decision rests with the legal guardian who must weigh the implications of the family's standpoint in relation to the patient's interests
- Consideration given to
 - Patient's needs
 - Physical condition and personality
 - Whether continued home care is possible

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Analyzing Ethical Dilemmas CELIBATE

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Analyzing Ethical Dilemmas

- Multi-step process
- Guided by different sets of values
- CELIBATE method
 - Clinical Ethics and Legal Issues Bait All Therapists Equally
- Considers both legal and ethical issues

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CELIBATE

1. What is the problem?
2. What are the facts of the situation?
3. Who are the interested parties?
 - Facility
 - Patient
 - Other therapists
 - Observers
 - Payers
 - Others

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CELIBATE

4. What is the nature of their interest? Why is this a problem?
- Professional
 - Personal
 - Business
 - Economic
 - Intellectual
 - Societal

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CELIBATE

5. Is there an ethical issue?
- Does it violate a professional code of ethics? Which section(s)?
 - Does it violate moral, social or religious values?
6. Is there a legal issue?
- Practice act/licensure law and regulations? Which section(s)?
 - Review the checklist for possible legal issues

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Legal Issues

- Age Discrimination?
- Antitrust?
- Assault and/or battery?*
- Breach of contract?
- Child abuse?
- Copyright violation?
- Confidentiality of student records?
- Covenants not to compete?
- Disability Discrimination?
- Elder abuse?
- Embezzlement?

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Legal Issues

- Family Medical Leave Act?
- Fraud? (Insurance)*
- Gag clauses?
- Guardianship/conservator ship?
- Kickbacks?
- Malpractice?
- Medical fraud?
- Modalities without training?
- Negligence?
- OBRA violation?

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Legal Issues

- Patient confidentiality?
- Plagiarism?
- Sex discrimination?
- Sex with a patient?
- Sexual harassment?
- Spousal abuse?
- Theft?
- Trade secrets?
- Treatment without a prescription or referral?
- Violation of privacy laws?

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CELIBATE

7. Do I need more information?
 - What information do I need?
 - Is there a treatment, policy, procedure, law, regulation or document that I do not know about?
 - Can I obtain a copy of the treatment, policy, procedure, law, regulation or document in writing?
 - Do I need to research the issue further? What does the literature say?
 - Do I need to consult with a mentor, my manager, and expert in this area or someone else?
8. Brainstorm possible action steps

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CELIBATE

9. Analyze action steps

- Eliminate the obviously wrong or impossible choices
- How will each alternative affect my patients, other interested parties and me?
- Do my choices abide by the applicable practice act and regulations?
- Do my choices abide by the applicable code of ethics?
- Are my choices consistent with my moral, religious and social beliefs?

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CELIBATE

10. Choose a course of action (considering ethical principles and philosophies)

- The Rotary Four-Way Test
 - Is it the *truth*?
 - Is it *fair* to all concerned?
 - Will it build *goodwill* and better *friendships*?
 - Will it be *beneficial* to all concerned?
- Is it win-win?
- How do I feel about my course of action?

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Let's Practice

- Terri is a student at the Sunnyside Nursing Home. She has struggled throughout her student internship. As her supervisor, you have given her specific feedback repeatedly. At midterm, she received a failing grade. Terri shows disregard for patient safety precautions. At the final evaluation your boss tells you not to fail Terri because she a learning disability. The facility does not want to be sued. You had no previous knowledge of Terri's learning disability -- only her failing performance.

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CELIBATE -- Let's Practice

- What is the problem?
 - The boss wants the supervisor to pass a failing student
- What are the facts of the situation?
 - Terri is a student intern
 - Midterm performance was failing
 - Terri's supervisor provided her with adequate supervision
 - Terri failed to modify her behavior
 - Terri forgets to abide by patient safety precautions

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CELIBATE -- Let's Practice

- What are the facts of the situation?
 - Terri's is still failing at the end of the fieldwork
 - The supervisor intends to fail her
 - The rehab director tells the supervisor not to fail Terri
 - The supervisor learns for the first time of the learning disability
 - The learning disability was not considered
 - The facility does not want a lawsuit

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CELIBATE -- Let's Practice

- Who are the interested parties? What is the nature of their interest?
 - Terri
 - Supervisor
 - Rehabilitation Director and facility
 - Terri's future patients and employers
 - Academic program from which Terri came
 - Other therapists/students at the facility
 - Terri's professional association/licensing board

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CELIBATE -- Let's Practice

- Is there an ethical violation?
 - Yes, violates provisions of justice, veracity
- Is there a legal issue?
- Are there other possible legal issues?
 - ADA, filing a false report, practice act violation, negligent supervision, contract breach, confidentiality
- Do you need more information?
 - First or last fieldwork assignment? ADA and practice act guidelines

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CELIBATE -- Let's Practice

- Brainstorm possible courses of action
 - Fail Terri
 - Pass Terri
 - Call the coordinator at the university
 - Research the ADA issue
 - Complain to the rehabilitation director's boss
 - Call the police? Terri's parents?
 - Contact the Justice Department
 - Consult with an ADA lawyer
 - Discuss the situation
 - Quit your job rather than fail Terri

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CELIBATE -- Let's Practice

- Analyze the action steps
 - Eliminate the obviously wrong or impossible choices
 - Calling the police
 - Contacting Terri's parents
 - Discussing with spouse or clergy
 - Quitting your job
- Choose a Course of Action
 - Call the academic program for guidance and/or another facility supervisor
 - Feel good about the choice

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RIPS Model

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RIPS Model

- Step 1: Recognize and Define the Ethical Issue
 - Realm
 - Individual process
 - Implications for action
 - Type of ethical situation
 - Barriers

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Realm

- Which area or realm does the ethical issue fall under?
 - Individual realm
 - Institutional/organizational realm
 - Societal realm

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Individual Process

- Individual Process: Does the problem appear to be one of the following?
 - Moral sensitivity
 - Moral judgment
 - Moral motivation
 - Moral courage

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Situation

- Situation: How do you classify the ethical situation?
 - Problem or issue
 - Temptation
 - Silence
 - Distress
 - Type A
 - Type B

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Dilemma

- There are two (or more) correct courses of action that cannot both be followed
- You are doing something right, and also something wrong
- Most often involve ethical conduct
- May involve conflicting traits of character

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RIPS Model

- Step 2: Reflect
 - Background
 - Major stakeholders
 - Consequences of action or inaction
 - Laws broken?
 - Professional guidance
 - Right-versus wrong tests

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RIPS Model

- Step 3: Decide the Right Thing to Do
- Step 4: Implement, Evaluate, and Assess Needed Changes to Prevent Recurrence

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Let's Practice

- Kate graduated last year from State University and is working at County Hospital. Her best friend from PT school, Sandy, is working across the state in a small rehab hospital. They often compare experiences and ideas for interventions. The young colleagues, typical of their generation, primarily communicate via text messaging and Facebook. They rarely talk on the phone.
- One Monday morning, Kate begins her workday by pulling charts of her scheduled patients and finds a familiar last name. She confirms the patient is Ms. Edwards, one of her former professors at State who was admitted to rule out a brain tumor.

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Let's Practice

- That evening, Kate is on Facebook and writes a message on her friend Sandy's "wall" about their former professor's admission. The message is posted on the Facebook "news feed," and within minutes Kate is "chatting" about Ms. Edwards' admission and condition with several of her former classmates, and others as well.
- Ms. Edwards' daughter is surprised to read about her mother's hospitalization on Facebook. She calls her mother and contacts Joanne, County Hospital's director of PT. Kate is unsure why there's even an issue. She attributes the flap to a generation gap.

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RIPS Step 1

- Recognize and Define the Ethical Issue
 - Realm: While Kate is sure it is individual, Joanne considers it institutional.
 - Individual process: Kate does not have the moral sensitivity to recognize the issue at hand
 - Implications for action: Joanne is obliged to address the issue
 - Type of ethical situation: A problem
 - Barriers: It is not clear if Joanne understands the generational challenge

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RIPS Step 2

- Step 2: Reflect
 - Background
 - Major stakeholders: Kate, Joanne, Ms. Edwards, Sandy
 - Consequences of action or inaction: Joanne obligated to take action; Kate obliged to understand
 - Laws broken?
 - Professional guidance: Code of Ethics, regarding rights and dignity and professional judgment
 - Right-versus wrong tests: Situation feels wrong? Discomfort? Violations?

123

RIPS Step 3

- Step 3: Decide the Right Thing to Do
 - For Kate, barrier is understanding that her actions are inconsistent with expectations from her profession and her patients

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RIPS Step 4

- Step 4: Implement, Evaluate, and Assess Needed Changes to Prevent Recurrence
 - This situation very well may result in a change in institutional behavior, as Joanne looks at her orientation program and recognizes she has young staff with social norms the differ from her own

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Let's Practice

- Current patient treated in homecare – Mike, an active 72-year-old retiree and widower who recently had a left total knee replacement and spent a week at a rehabilitation center before returning home.
- Eager to "get back in the swing of things," as he puts it.
- DC goal is for Mike to be self-sufficient, albeit while still experiencing residual pain, and capable of transporting himself to physical therapy. Plan of care estimated 3X/week for 3 weeks
- Upon visiting, the car has been moved and it is apparent that Mike has been driving, shopping, fixing things around the house
- James feels conflicted. Mike has shown functional independence that defies the definition of homebound. Should he discharge?

126

RIPS Step 1

- Recognize and define the ethical issue
 - Realm: Individual and societal
 - Individual process: Moral sensitivity on James's part
 - Implications for action: Mike will stop receiving PT that can benefit him
 - Type of ethical situation: A dilemma
 - Barriers: Concern for Mike's safety

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RIPS Step 2

- Major stakeholders: James and Mike
- Consequences of action or inaction: If James takes action, Mike will lose additional PT he needs. Inaction means that he receives PT while not technically homebound
- Laws broken? Medicare laws are very specific regarding homecare
- Professional guidance: Principle 7 of the Code of Ethics
- Right vs. Wrong: Illegal? Yes. Situation feels wrong? Yes. Discomfort if information becomes public? Yes. Your parents likely to take action in similar circumstances? Yes. Violations of APTA's professional codes and documents? Yes.

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RIPS Step 3

- Decide what to do
 - While James must consider discharge, he also must do all he can to see that Mike will maintain access to the outpatient services he needs in order to ensure his safety

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RIPS Step 4

- Implement, evaluate, and reassess
 - It's unclear that any change in institutional policy or culture is warranted, but that possibility should be fully explored

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Let's Practice

- Jenna has been working at Pondview Medical Center for 6 years - wound care expert and CI for 4 years
- Next-to-last clinical rotation for Brendon, a third-year DPT student at the local university. PT is a second career and he is a little older than the "typical" student.
- Brendon stayed late to complete paperwork and walks out with Jenna. Engage in clinical conversation. Jenna mentions, during small talk, that her birthday is coming up.
- Brendon asks if he can buy her a birthday drink at local bar
- She indicates it is inappropriate, but he persists indicating it would give him a chance to "pick her brain" more about wound care
- Would having a single drink with Brendon while engaged in professional dialogue be so wrong?

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RIPS Step 1

- Recognize and define the ethical issue
 - Realm: Into which realm or realms does this situation fall: individual, organizational/institutional, or societal?
 - What does the situation require of Jenna? Of Brendon? Which individual process is most appropriate: moral sensitivity, moral judgment, moral motivation, or moral courage? Are there implications for action on the parts of anyone besides Jenna and Brendon?
 - What type of ethical situation is this: a problem, dilemma, distress, or temptation?
 - Are there barriers to Jenna taking action?

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RIPS Step 2

- Reflect upon the situation
 - What do you know about the legal obligations Jenna may face?
 - Who are the major stakeholders?
 - What are the potential consequences of action or inaction on Jenna's part?
 - What ethical principle or principles may be involved?
 - How does this scenario stack up against the "tests?"

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RIPS Step 3

- Decide what to do
 - If it fails all of the "tests," this step is superfluous
 - If it passes the tests, then determine the right thing to do
 - Rule-based: Follow only the principle you want everyone else to follow
 - Ends-based: Do whatever produces the greatest good for the greatest number of people
 - Care-based: Do unto others as you would have them do unto you

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RIPS Step 4

- Implement, evaluate, and reassess
 - Having determined in your own mind the right thing to do and the best way to implement the decision, reflect on the course of action chosen and think about whether a change in the clinic's organizational policy or culture might prevent this scenario from recurring

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Avoiding Ethical Dilemmas

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PROTECT THY PATIENTS AND THYSELF

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Avoiding Ethical Dilemmas

P -- Put a copy of your licensure law on your desk and read it!

R -- Report ethical and legal violations

O -- Open your eyes

T -- Tell them you want it in writing or in email

E -- Encourage ethical behavior

C -- Complete, thorough documentation

T -- Think!!

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Avoiding Ethical Dilemmas

T -- Take the patient's interest above all

H -- Handle situations as they arise

Y -- Yearn to learn

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Avoiding Ethical Dilemmas

P -- Plug into your professional associations

A -- Ask a lot of questions

T -- Train and supervise all subordinates properly

I -- Internet sources

E -- Establish a relationship with a mentor or peer

N -- Never fall behind

T -- Take a good look at the professional literature

S -- Surf the internet for regulatory changes

&

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Avoiding Ethical Dilemmas

- T -- Take the time to read your code of ethics
- H -- Hand over patients to those with expertise
- Y -- Yield to the dictates of payers
- S -- Save a copy of correspondence
- E -- Explore all alternatives
- L -- Look at professional association/licensure homepages
- F -- Fill out all forms accurately and truthfully

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Resources to Help

- Core documents from APTA -- APTA code of ethics, Guide to Physical Therapist Practice, and Guide for Conduct and Professionalism
- Other resources from APTA
 - Coding and Billing
 - Compliance
 - Managed care contracting tool kit
 - PT in motion

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continued

You, the therapist, have delegated treatment of a client to the physical therapy assistant under your supervision. The client complains of pain during the treatment session. The PTA applies ultrasound to the patient during the session without consulting you and without a physician script/order to do so.

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continued

You discover when reading the daily notes of the assistant that you are supervising that he is adding and changing goals for the client without consulting you.

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continued

You are working in an outpatient clinic that deals primarily with Medicare Part B as a payer. You have an aide in your clinic. You ask the aide to complete the therapeutic exercise program with the client. You bill for these services.

You have been told as a PT to begin billing your patient sessions under CPT 97535, self-care. You realize this code pays more than therapeutic exercise and wonder if this is the reason?

You have been told as a PT to continue treating your patient – just 3 more sessions – so the facility can continue to obtain skilled reimbursement and because the family is not quite ready at home for discharge.

A 56 year-old man is referred to physical therapy for sciatica, degenerative disc disease, and degenerative joint disease. He is the sole caretaker for his disabled wife. Over the last month he has lost his capacity to bend, lift and carry during activities of daily living and work. Medicaid will only provide for a PT evaluation but without any follow up services. The PT recommends follow-up twice a week for 4 weeks.

Jeremy, a PT, has been treating a patient for 2 months and has been receiving expensive gifts on a regular basis from the family of the elderly woman. Cheryl, his co-worker, has co-treated the patient for the last month and has noted in the chart that the patient has met all goals and is ready for discharge. Since then, the elderly woman has been attending rehabilitation with Jeremy 3x per week. Jeremy states he doesn't have the heart to DC her.

Lauren, a PT, is the only witness to a patient fall in the clinic gym. The patient has balance problems and the PTA, Hal, working with her was not guarding her. Lauren observes Hal place a gait belt on the patient after the fall and before calling for assistance. Lauren is unsure what to do about this situation.

Jim, a PT, works at a private practice that has a number of clinics throughout the region. It has a centralized management structure. One of the top managers calls Jim and asks him to call a previously scheduled new patient to re-schedule an initial evaluation since a VIP/shareholder has been referred to the clinic wants to be seen as soon as possible. Jim is uncomfortable with this request.

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Sara works in a private practice in which there is a profit sharing plan. Her year-end bonus is directly related to maximizing return visits as they are the most cost effective. Her boss has been heard to say to other staff members that they should treat patients to the maximum of their benefits; after all, you can always change the goals so there is more therapy to do – it just requires being a little creative. She has also been heard to encourage therapists to discontinue treatment early for those patients with poor reimbursement. Sara is uncomfortable with this situation but is counting on her year-end bonus.

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Rob, a morbidly obese disabled veteran, arrived at an outpatient clinic, requesting PT services. His doctor referred him to this clinic because of their great reputation. Mary, a PT, working in the gym saw Rob walking into the clinic. She called the front desk requesting they not assign her the patient. The patient was scheduled two days later for another PT. Ellen, a PTA who works with Mary, overheard the conversation requesting that the patient not be assigned to her. Ellen knows that Mary is a fitness fanatic and has heard her make derogatory comments about people who are overweight. Ellen feels very uncomfortable about this situation and wonders if she should do anything.

Thank You!

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