

Law/Ethics/Regulations

Helpful References-A Partially Annotated Bibliography

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Many books have been published that deal with the law/mental health interface. Below is a far-from exhaustive list, with annotations about those I have read and about which I have opinions. The list will be updated periodically.

AAMFT: *Users' guide to the AAMFT Code of Ethics*. Alexandria, VA. American Association of Marriage & Family Therapists.

Adams, J. (2001). *On your side: protecting your mental health practice from litigation*. Phoenix: Zeig-Tucker.

I did a publisher's review of his book, which is said to have been written under a *nom de plume* by a psychologist who surrendered his license rather than expending his financial resources to fight a board action. While the book is an excellent source of information about all of the "dark clouds" that can enter a professional's life (professional society ethics actions, board actions, malpractice suits, etc.), and while the book does not offer legal advice, it does accurately represent the issues in risk management that all professionals should know. My only difficulty with the book, after teaching risk management for over 10 years, is that the author begins by scaring the living h... out of the reader, which raises anxiety levels so high that many won't read it at all, and of those who do, some will suppress it due to its toxicity. "Other than that, Mrs. Lincoln...."

APA Series: *Law and Mental Health Professionals*. A series of 25 books covering 24 states. Washington, DC: American Psychological Association. www.apa.org books.

This is a series of books published by the American Psychological Association. In addition to the importance of making sure that the Information in these books is up-to-date, there is a significant difference between the layouts of this series and the Behke, et al series which strongly favors the Behnke series (see below).

Bartlett, P. & Sandland, R. (2007). *Mental health law: policy & practice*. New York: Oxford.

Behnke, et al: a series entitled: *Essentials of ... (state) mental health law: a straightforward guide for clinicians of all disciplines*. New York: Norton (California, Massachusetts, New York & Florida)

While these books are in need of updating, they stand as the best and most helpful resources for practitioners in the four states they cover. Chapters are thoughtfully organized by topics relevant to practitioners and problems/issues are addressed in question/answer format. A truly outstanding series.

Bernstein, B. & Hartsell, T. (1998). *The portable lawyer for mental health professionals*. New York: Wiley.

Bersoff, D. N. (Ed.) (2005). *Ethical conflicts in psychology*. 4th Edition. Washington, D.C.: American Psychological Association.

This is the newest revision of a classic in the field, with descriptions of fundamental dilemmas arising for professionals in a variety of roles.

Bongar, B. (2002). *The suicidal patient: clinical and legal standards of care*. (2nd Ed.) Washington, DC: American Psychological Association.

This is an exceedingly helpful document for clinicians who work with suicidal patients/clients, complete with several formats for performing and documenting suicide risk assessments.

Dalenberg, C. (2000). *Countertransference and the treatment of trauma*. Washington, DC: American Psychological Association.

This book is required reading for all clinicians who treat trauma survivors. Lucid, clear and empirically-based without being boring, Dalenberg helps clinicians understand a very complicated group of patients and themselves.

Ford, G. (2001). *Ethical reasoning in the mental health professions*. Boca Raton, FL: CRC Press.

Gutheil, T.G., & Appelbaum, P.S. (2000). *Clinical handbook of psychiatry and the law*. 3rd Edition. New York: Lippincott Williams & Wilkins.

This is a very good edited volume, with chapters on important topics, written by thoughtful and knowledgeable professionals.

Gutheil, J., & Brodsky, S. (2008). *Preventing boundary violations in clinical practice*. Guilford Press.

Get this book! Read it too – don't just let it sit on your shelf. While I'm sure that the last thing you want to do is to curl up in bed with a book on boundary issues in clinical practice, I actually have to do just that. Many times, I loathe and detest those experiences, but not with this book. This is the boundary book for grown-ups.

A comprehensive (in about 300 pages) review of the whys/wherefores and how-to's/how not to's of boundaries. This is a mature and thoughtful piece, acknowledging, for example, that regulatory boards tend to be more than just a few "jnd's" (just noticeable differences, for those of you who may have forgotten your intro psych courses) more rigid than the mainstream of mental health professionals. Another example of the authors' thoughtfulness and flexibility concerns the acknowledgement that personal disclosures by clinicians who treat childhood trauma survivors might be a bit more revealing than with, say, uncomplicated anxiety or depression spectrum disorders, because childhood trauma survivors have experienced people who have represented themselves in ways that belie the truth about them and patients/clients may need to know that clinicians are who they say they are. I give it an A+!!

Hartsell, T., & Bernstein, B. (2007). *The portable ethicist for mental health professionals*. New York: Wiley.

Hays, R. (2003). *Texas mental health law: a sourcebook for mental health professionals*. Austin; Texas Psychological Association.

This book is written for Texas professionals by a psychologist-attorney who practices in Texas. The "last word" on how things work (or not) in Texas.

Hedges, L. (Ed.). (2007). *Facing the challenge of liability in psychotherapy: practicing defensively*. (2nd Ed). Northvale, NJ: Jason Aronson, Inc., 173-189.

I wrote a chapter in this volume on risk management for clinicians who work with children/families where divorce/custody issues obtain. I think that the volume, as a whole, is somewhat uneven, and there are individual chapters that are excellent.

Knapp, S.J. & VandeCreek, L. (1997). *Treating patients with memories of abuse: legal risk management*. Washington, D.C.: American Psychological Association.

This book represents the "write a lot" end of the question of how extensive record-keeping should be, The other end of this continuum is represented by Pope & Brown (below), with whom I am in much greater agreement.

Knapp, S. & VandeCreek, L (2005). *Practical ethics for psychologists: a positive approach*. Washington, DC: American Psychological Association.

Koocher, G.P., & Keith-Spiegel, P. (1998). *Ethics in psychology: professional standards and cases*. New York: Oxford.

Koocher, G.P. & Keith-Spiegel, P, (2008). *Ethics in psychology and the mental health professions*. New York: Oxford.

This is a first-rate book, written by first-rate people. A staple in any professional's library.

Meyer, R. & Weaver, C. (2006). *Law and mental health: a case-based approach*. New York: Guilford Press.

This book provides landmark legal cases that have impacted clinical practice, with supporting information about the individuals involved in the cases. A unique contribution.

Lifson, L.E. & Simon, R.I. (Eds.) (1998). *The mental health practitioner and the law: a comprehensive handbook*. Cambridge: Harvard University Press.

This is a well-crafted and very helpful book, written by thoughtful and helpful professionals.

Nagy, T. (2000). *Ethics in plain English*. Washington, DC: American Psychological Association.

A very helpful and clear document on the ethics code of the American Psychological Association, applicable to all professional societies' ethics codes.

O'Donohue, W. & Ferguson, K. (Eds.). (2003). *Handbook of professional ethics for psychologists: issues, questions and controversies*. Thousand Oaks, CA: Sage Publications, Inc.

Patterson, T. (1999). *The couple and family clinical documentation source book*. New York: John Wiley & Sons, Inc.

Very helpful documentation ideas for professionals who work with children/families.

Pope, K.S. & Brown, L.S. (1996). *Recovered memories of abuse: assessment, therapy, forensics*. Washington, D.C.: American Psychological Association.

The "write sparingly" end of the documentation debate – well-reasoned and very helpful.

Pope, K.S., & Vasquez, M. (2001). *Ethics in psychotherapy and counseling: a practical guide*. New York: John Wiley & Sons, Inc.

For professionals who like to be taught how to think – not just what to do, when faced with ethical dilemmas.

Saccuzzo, D. (2002). Liability for failure to supervise adequately: let the master beware. Parts 1 & 2. *The psychologist's legal update*, 13 & 14. (available through the National Register of Health Service Providers in Psychology, info@nationalregister.org).

This is an excellent set of two papers on supervision, with a sample employment/supervision contract in the second document.

Sales, B., Miller, M. & Hall, S. (2005). *Laws affecting clinical practice*. Washington, DC.: American Psychological Association

Shapiro, D., Walker, L., Manosevitz, M., Peterson, M. & Williams, M. (2008). *Surviving a licensing board complaint: practical tips*. Phoenix: Zeig & Tucker.

I wrote the “afterward” for this book, which is an excellent statement on the issue of licensing board actions against professionals. The information is accurate, timely, and presented in a way that is not designed to provoke crippling anxiety in those affected by board actions.

Woody, J. & Woody, R. (2001). *Ethics in marital and family therapy*. Alexandria, VA: American Association of Marriage & Family Therapists.

Zuckerman, E. (2008). *The paper office: 4th Edition*. Guilford Press.

I have to tell you that I have rarely experienced the kind of ambivalence toward a book as I have toward this one. Across its incarnations, this work has gone from a helpful and thoughtful set of models for record-keeping to a treatise/manual/guide//meta-guide to mental health practice. While it is exhaustive, thorough and thoughtful, providing ways to understand varying approaches to clinical practice and documentation samples compatible with such approaches, it also gets caught in some paradoxes that pose significant risks for clinicians, especially novice clinicians, for whom the work is especially important. Some examples: the author indicates that he has not had the work reviewed by attorneys, as such reviews are likely to generate conflicting opinions. Throughout the book, however, there are examples of clearly stated legal advice which, if followed, could cost a clinician his/her license. My concerns turn particularly toward novice clinicians who were not themselves attorneys in some prior incarnation and haven’t learned to pause and reflect over every word they read, asking “why this word and not another word?”

Consider, e.g., on p. 245, the author suggests that that (poorly paid) fact witnesses (the category typically assigned to treating clinicians as opposed to experts), “can only report dates of service, note costs, and affirm you provided services to the client. If you are testifying to more than this, all your statements are professional judgments and so you are testifying as an expert witness and deserve the higher fees.” Well, sort of. What about diagnosis? If you wrote a diagnosis the attorney asks what diagnosis you assigned to the patient/client, you can’t refuse to state it, as you wrote it. It has nothing to do with any current opinion – it’s a “fact” that is written in your records. What about the treatment plan? Fact. What about your assessments of progress/regression, as documented in your records? Facts. Attorneys examining clinicians at deposition or trial have a field day with clinicians who think they know the law, but don’t. They’re smart as... and will be treated as such.

Another example: on p. 46, the author suggests that it's ok to form private contracts to treat patients/clients who are insured when the clinician is a contracted provider, and when the patient/client wishes not to utilize his/her insurance benefits. Puhleeze, don't do this without checking with the insurance company first. Some policies provide for this (after all, insurance companies keep more of their money when they don't have to pay for services), but this varies within and between insurance companies, policy by policy. For some, it's fine, but for others, it's possible insurance fraud and clearly breach of contract. Licensing boards don't like these types of events, as they are viewed as moral violations, and mental health practitioners who commit moral violations are seen as risks to the public. Licensing boards are created to protect the public. Enough said?

I could go on and on, but then again, my opinions are what the author says he wants to avoid. So let me sum this review up by saying that this volume is huge in scope and provides great depth and flexibility as to approaches to record-keeping and practice styles, but *caveat novice!!!!*

(01/13/10)