

THIRD EDITION



DOCUMENTATION
in
COUNSELING
RECORDS

An Overview of Ethical, Legal, and Clinical Issues

Robert W. Mitchell, ACSW



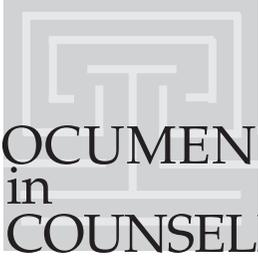
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Dedication

*This book is for every person who ever tried to help someone.
Each of you makes a difference.
You always have and you always will.*



Contents

Preface	ix
About the Author	xv
Special Thanks	xix
Glossary	xxi
CHAPTER 1	
Ethical Behavior, Values, and Professional Standards	1
Ethical Conduct	1
Enforceable and Aspirational Guidelines	5
CHAPTER 2	
A Legal Perspective	9
Credentials	10
Charting Essentials	10
Testimony and Documentation	12
Missing and Incomplete Entries	16
Altered Documentation	16
The Record as Legal Defense	17
Eight Ways to Guarantee a Lawsuit or Allegations of Unethical Conduct	18
CHAPTER 3	
A Fiscal Perspective	19
What Not to Do	21
What You Must Do	21
Essential Elements for the Staff Note	23
Guidelines for Ethical Billing	25

CHAPTER 4	
A Coworker's Perspective	27
Conclusionary Terms, Modifiers, and Abbreviations	28
Problematic Staff Notes	29
Possible Repercussions	30
Clear, Accurate Staff Notes	31
CHAPTER 5	
A Client's Perspective	35
Double Standards	36
Cultural Diversity	37
CHAPTER 6	
Online Counseling and Electronic Records	41
Online Counseling Services and Safeguards	42
Electronic Record-Keeping Guidelines	45
CHAPTER 7	
Sexual Relationships and Dual Relationships	53
Sexual Relationships and Ethical Conduct	53
Dual Relationships in the Counseling Process	57
CHAPTER 8	
Documenting High-Risk Cases	61
Qualifiers, Violence, and Threats of Violence	62
Homicidal and Suicidal Clients	62
Physical and Sexual Abuse	65
Criminal Behavior	65
Permission for Service Form	66
Additional Considerations	67
Need for Specificity	69
CHAPTER 9	
Terminations	73
The Termination Letter	74
The Termination Summary	75
Abandonment	76
Right to Refuse Service	78

Frequently Asked Questions About Documentation	81
Multiple Uses of a Record	81
Subpoenaed Records	82
The Unofficial Chart	82
Brochures and Informational Flyers	83
Preprinted Forms	84
Client's Use of Slang and Vulgar Language	84
Faxed Client Information	85
Terminations and Nonpayment	85
Missing or Lost Documentation	86
Filing Systems and Security	87
Cosignatures, Credentials, Students and Volunteers	88
HIV/AIDs	89
Disclaimer Forms	91
HIPAA Basics	92
Risk Exposure	94
What Would You Do?: Ethical Considerations	95
Scenarios for Discussion and Professional Development	95
Six Steps for the Resolution of Ethical Problems	99
Concluding Thoughts	100
Epilogue: You Make a Difference	101
References, Suggested Readings, and Web Sites	105



Preface

In 2005, the American Counseling Association published its revised *Code of Ethics* as approved by the ACA Governing Council. This is the first revision of the Association's *Code of Ethics* since July 1, 1995, and it establishes critical new guidelines for professional conduct.

Documentation in Counseling Records: An Overview of Ethical, Legal, and Clinical Issues (3rd ed.) is written to help counselors reflect on the specific requirements of their profession in light of the new code. The previous two editions, published in 1991 and 2001, focused primarily on the legal dimensions of documentation in the counseling professions. In response to the new code, this third edition builds on that focus but with an emphasis on ethical conduct.

In an age of legal, clinical, and fiscal accountability, record keeping and ethical conduct are important components of professional counseling. As counselors provide services in the 21st century, we must accept reality, and the reality is this:

- Lawsuits and allegations of unethical conduct against counselors continue to increase. Without adequate documentation and adherence to the *ACA Code of Ethics* a counselor's vulnerability is also increased.
- Counselors, client records, and personnel files will continue to be ordered into courtrooms because the legal system believes the documentation contains information needed to make decisions about child custody, involuntary hospitalization, and a wide array of other situations, including allegations of

unethical behavior. Lack of integrity and incompetence as well as missing, incomplete, and inadequate charts can be harmful to the client as well as the counselor.

- There will be occasions when the primary counselor will be sick, on vacation, or otherwise unavailable to provide emergency service. Someone else will depend on the chart to make clinical decisions. Adequate records can ensure appropriate intervention and continuity of care as directed by the *ACA Code of Ethics*.
- All funding sources are demanding documentation that verifies the need for and the rendering of reimbursable activity, as well as verification of counselor competence and accurate billing procedures.
- Utilization reviews, peer reviews, quality assurance reviews, and committees on ethical inquiries will continue to be important parts of professional counseling. An accurate, comprehensive record, as well as an accurate, comprehensive personnel file, will be primary source documents.

This edition emphasizes professional values as an important way of living out an ethical commitment and reinforces the fact that “inherently held values . . . guide our behaviors [and] are deeply ingrained in the counselor and developed out of personal dedication, rather than the mandatory requirement of an external organization” (*ACA Code of Ethics*, Preamble).

The volume, therefore, has a number of key purposes:

- To understand the multiple uses of a record, those who have access to it, and its relationship to the *ACA Code of Ethics*
- To increase awareness of legal trends, the changing definition of confidentiality, and the most frequent causes for malpractice suits and allegations of unethical conduct
- To identify the record as a resource that can help counselors face the challenges of accountability and ensure their ability to meet human needs
- To recognize everyday problems associated with ineffective communication, including how records can be used against counselors in a malpractice case or in an allegation of unethical behavior

- To demonstrate how records can be used to enhance the service relationship, promote consumer empowerment, and provide the counselor with a defense in the event of a lawsuit or allegation of unethical behavior
- To identify the record and the *ACA Code of Ethics* as resources that can help counselors face the challenges of accountability and ensure the ability to meet human needs
- To establish the *Code of Ethics* as a foundation for professional and personal behavior
- To increase overall understanding of professional values and principles of service
- To demonstrate how compliance with the *ACA Code* can reduce legal risk exposure
- To provide guidelines for resolution of ethical dilemmas

None of the editions of this monograph will provide a fail-safe solution to all record-keeping problems or every ethical dilemma. Certainly, the books are not a substitute for competent legal advice. Neither the American Counseling Association nor the author is liable for a reader's conduct or damages that may result from the use of training materials.

Forty-three years of experience, countless books, articles, consultations with associates, workshops I've attended, and the National Association of Social Worker's *Code of Ethics* aided in the development of my own workshops on documentation and ethical issues and this monograph. Although it is impossible to credit each source of information, this publication contains a list of references and suggested reading materials, some of which influenced the development of this work. When actual examples of clinical documentation are used, only names and dates have been changed to protect confidentiality.

You may not agree with everything in this monograph, and some material may not be applicable to your work. It is also important to understand that this monograph is about ethical conduct and risk management, not risk elimination. Nevertheless, the principles in this book are relevant to all social service and health care professionals, including those in mental health, developmental disability, substance abuse, schools, managed care, criminal justice, psychosocial

rehabilitation, and case management, whether in private or public practice. Experienced staff will find this book a useful refresher course, and new staff will obtain a sound foundation upon which to base documentation and professional conduct.

Many of the essential elements of this monograph were developed in the live training workshops I have presented over the past two decades. This book cannot be as comprehensive or as much fun as a live workshop for several reasons. We are not in a room filled with people, and there is no opportunity for discussion. I cannot show my audiovisual tape (or DVD) titled *No Good Deed Will Go Unpunished*. In addition, in my workshops, I always have my guitar and sing a few songs. Today, we cannot sing together, but this monograph is written in the first person to maintain the feel of a live training program or workshop and permit you to more personally relate to the material and its presenter. I have even included the lyrics to some of the songs I sing at workshops in some of the chapters. Regardless, I hope to help you learn to write with pride as you document professional interventions and judgments. Finally, this monograph is designed not only to promote an understanding of and compliance with the *ACA Code of Ethics*, but also to reduce risk exposure related to unethical actions, malpractice lawsuits, and paybacks to funding sources.

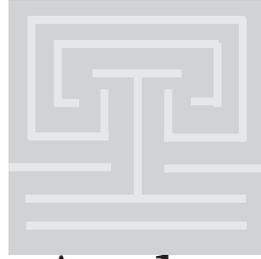
Some of the information in this monograph is carried over from the first two editions because the principles of good record keeping and ethical conduct will always remain constant. Nevertheless, you will discover a significant amount of new information, especially as it relates to online counseling, cultural sensitivity, integrity, deception, misrepresentation, confidentiality, dual relationships, sexual relationships, ethical conduct, and steps for the resolution of ethical problems.

This monograph presupposes that you have a basic knowledge of your profession's code of ethics. If you have not reread it in the last year, do so now and keep a copy on your desk for ready reference. We will address the necessity for and an understanding of compliance with a code of ethics in order to deal more effectively with the numerous legal and moral complexities within society. Hopefully, the third edition will be a valuable tool to assist you in an era of

increasing numbers of malpractice lawsuits, paybacks to funding sources, and allegations of unethical behavior.

As you read the following pages, you will note that the resource most frequently cited, of course, is the *ACA Code of Ethics*. I have attempted to correlate chapters to the specifics in the *Code*, so much so that pertinent *ACA Code* citations introduce most chapters. This monograph reinforces the purposes of the *ACA Code*, focusing specifically on the following goals outlined in the *Code's Purpose*:

- To establish “principles that define ethical behavior and best practices of association members”
- To serve as an “ethical guide designed to assist members in constructing a professional course of action that best serves those utilizing counseling services and best promotes the values of the counseling profession”
- To serve as the “basis for processing of ethical complaints and inquiries initiated against members of the association”



About the Author

ROBERT W. MITCHELL, ACSW, began his career as a children's protective service worker in 1959. Working on behalf of abused and neglected children, he made frequent court appearances and quickly learned the importance of good documentation and sound ethical judgment. He obtained a master's degree from the University of Louisville Raymond Kent School of Social Work in 1962.

In 1973, he was employed as a social worker by one of the largest mental health agencies in the nation. The organization was audited in 1978 and went bankrupt, in part because of its inadequate record keeping. It was an unpleasant but effective way to learn even more about the importance of documentation. Over the next 3 years Mr. Mitchell developed a training program designed to help counselors document professional judgments and interventions. His program, "What Every Clinician Should Know About Money," was published in 1981 in *Creativity and Innovation: Challenge of the 80s* (H. Fishman, Ed., pp. 117–126, Davis, CA: Pyramid).

He has been a member of the National Association of Social Workers since 1962 and the Academy of Certified Social Workers since 1965. The Kentucky Chapter of the National Association of Social Workers named Mr. Mitchell Social Worker of the Year in 1988. Later that year he also received the Distinguished Citizen Award from the mayor of Louisville and the Honorable Order of the Kentucky Colonels from the governor for services to the field of mental health.

In 1990, the National Association of Social Workers Malpractice Insurance Trust released *The Client Record and Professional Account-*

ability, an educational audiovisual tape based, in part, on his documentation and risk management workshop. The tape contains segments of his program and refers to him as an expert.

Mr. Mitchell was also a founding member of the American Association for Therapeutic Humor. Music has always been an extension of Mr. Mitchell's social work values, and the executive committee of the State Chapter of the National Association of Social Workers has proclaimed him the Kentucky Chapter Bard. His first recording, "I Need a Respite," was released in 1992. "Some Days This Place Is a Zoo" was released in 1994. The 1995 *Encyclopedia of Social Work* (19th ed., NASW Press) contains an article that notes Mr. Mitchell is one of a small number of professionals who commercially recorded music for a specific social-work-related purpose. According to the article, his "music evokes laughter and self-therapy for dealing with burn-out." Several of his songs are included in this monograph.

In 1978, Mr. Mitchell moved from direct clinical service to finance and became the first manager of accounts receivable for Seven Counties Services, Inc., a mental health/developmental disability/substance abuse agency in Louisville, Kentucky. Later, he transferred to program planning and evaluation, and still later was promoted to internal compliance auditor for the \$55 million organization.

He is a former member of the National Speakers Association and the Institute for Internal Auditors. As professional speaker, trainer, and author, Mr. Mitchell has provided training to over 250,000 professionals in 47 states and Canada. A partial listing of audiences includes the United States Psychiatric Rehabilitation Association (formerly the International Association of Psycho-Social Rehabilitation Services), the Canadian Mental Health Association, the Child Welfare League of America, the Mayo Clinic, the National Rehabilitation Association, the Mental Health in Corrections Symposium, the Association of Behavioral Healthcare Management, the American Association of Homes and Services for the Aging, the Alcohol and Drug Rehabilitation Wellness Institute, the National Association of Qualified Mental Retardation Professionals, the National Institute for Alternative Care Professionals, the American Professionals Society on Child Abuse and Prevention, the Developmental Disabilities Symposium, and 23 universities.

About the Author

Since his retirement from Seven Counties Services, Inc., in December 2002, Mr. Mitchell has worked exclusively as an independent speaker and trainer, offering workshops from coast to coast.



Special Thanks

To my parents, Isabel and William Mitchell, for teaching me that if something is worth doing, it is worth doing well.

To my wife, Carolyn, for her encouragement to develop a workshop related to ethics and documentation as well as her love, patience, understanding, and support for 45 years.

To my children, Debbie and Rob, for their love and encouragement.

To Rita Gray Recktenwald for friendly but firm editing for the third time. She also edited the 1991 and 2001 editions of *Documentation in Counseling Records*. Her knowledgeable and sensitive contributions have created a more focused, more organized, and easier-to-use monograph. Her skillful assistance was central to the completion of this project, and I will always be grateful for her participation.

To the American Counseling Association for generous support and encouragement, and for the privilege of having published three books with the association, and especially to Director of Publications, Carolyn Baker, for her invaluable assistance with this monograph.

—Robert W. Mitchell, ACSW



Glossary

Client: The recipient of any professional intervention from a counselor. An individual seeking or referred to the professional services of a counselor for help with problem resolution or decision making. Also referred to as a consumer, patient, member, resident, or beneficiary. A client has also signed a form granting the counselor permission to provide service, or in the case of a child or person who has been declared incompetent, signed permission has been obtained from the parent/guardian, or the counselor has received a copy of a court order that provides a service directive.

Confidentiality: In general terms, the maintenance of client secrets, but the concept goes beyond the record and covers communication between counselor and client. The purpose of confidentiality is to encourage candor so that the client yields more thorough information, thereby promoting better diagnosis and treatment.

Counselor: A professional (or a student who is a counselor-in-training) engaged in a counseling practice or other counseling-related services. Counselors fulfill many roles and responsibilities such as counselor educators, researchers, supervisors, practitioners, and consultants.* The counselor is a service provider, and the term includes all professionals, including social workers, nurses, psychologists, psychiatrists, case managers, and therapists.

Culture: Membership in a socially constructed way of living, which incorporates collective values, beliefs, norms, boundaries, and

*Denotes verbatim definitions from the 2005 *ACA Code of Ethics* Glossary.

- lifestyles that are cocreated with others who share similar worldviews comprising biological, psychosocial, historical, psychological, and other factors.*
- Diversity:* The similarities and differences that occur within and across cultures, and the intersection of cultural and social identities.*
- Documents:* Any written, digital, audio, visual, or artistic recording of the work within the counseling relationship between counselor and client.
- Ethical conduct:* The professional's actions, which must conform to the code of ethics developed and agreed to by other professionals in the field.
- Multicultural/diversity competence:* A capacity whereby counselors possess cultural and diversity awareness and knowledge about self and others, and how this awareness and knowledge is applied effectively in practice with clients and client groups.*
- Multicultural/diversity counseling:* Counseling that recognizes diversity and embraces approaches that support the worth, dignity, potential, and uniqueness of individuals within their historical, cultural, economic, political, and psychosocial contexts.*
- Plan:* A document that details why the client is being served and what is going to be done, and lists measurable and desired outcomes. Sometimes referred to as a treatment plan, individual habilitation plan, plan of care, service plan, residential plan, individual education plan, rehabilitation or vocational plan, or case management plan.
- Privileged communication:* The communication between a category of professionals and their clients, identified by state statute as privileged and not subject to disclosure. Privilege, like confidentiality in general, exists for the benefit of the client and can be waived by the client. There are many exceptions to general rules of law and ethics. When a judge orders a counselor to answer questions or to provide copies of the counseling record, the orders are absolute unless they are reversed by a higher court or suspended while a higher court is considering an appeal. As a result, counselors who comply with a judge's orders generally cannot be held liable even if someone's legal rights are violated in the process. Counselors who plan to refuse to

comply must have their own attorney and must rely on legal advice. Counselors have an ethical responsibility to protest an order issued by a judge if they believe the order violates an ethical obligation. However, if a judge rules the order will stand, a counselor must comply or may be held in contempt of court.

Record: The organized file (paper or electronic) containing clinical, fiscal, demographic, and other information as deemed necessary for effective service delivery. Includes any information used for the purpose of diagnosis and treatment. The record is maintained in accordance with state standards, organizational procedure manuals, and funding source regulations. Also referred to as a chart or folder. May include any other written documents, audio or video recordings, or other tangible items that contain client information.

Service: A generic term referring to a professional intervention. Includes, but is not limited to, counseling, evaluation, consultation, individual therapy, family therapy, group therapy, art therapy, psychosocial rehabilitation, chemotherapy, behavior modification, case management, and home visits.

Staff note: A counselor's entry that documents professional judgment or intervention. Sometimes referred to as clinical entry, service note, progress note, daily note, group note, weekly summary, or service log.

Subpoena: A legal document issued under the auspices of a court, designed to compel a person to appear in court and give testimony. It may also require that the professional bring records to court.

Subpoena duces tecum: The legal document issued under the auspices of a court that requires submission of specific records as described in the subpoena.

