Webinar Agenda

Week One

1. Define Supported Decision-Making and the basic underlying values.
2. Provide an understanding of the difference between supported decision-making and legal guardianship.

Week Two

3. Ethical consideration about the use of the supported decision-making agreement and how to interact with others who may be providing this support.
Webinar Agenda

Week One

1. Guardianship
2. Capacity and Competence
3. Supported Decision-Making
4. Self-Determination
5. Supported Decision-Making Agreements
6. Decision Making Continuum
Webinar Agenda

Week Two

1. Review Legal Concepts
2. Review Decision Making Continuum
3. Bill of Rights for Persons Under Guardianship
4. Ethical Practices & Standards
5. Principals of Ethical Behavior
6. Code of Professional Ethics
7. Examples
Legal Concepts

- Guardianship
- Capacity
- Competency
- Supported Decision-Making
Decision-Making Continuum

• **Best Interest**
  ◦ Focus on well-being, health and welfare
  ◦ Cost/benefit analysis
  ◦ “Reasonable person”

• **Substituted Judgment**
  ◦ Acting on a determination of what the individual would choose if they were able to make a choice.
  ◦ Required when an individual used to have capacity

• **Supported Decision-Making**
  ◦ Empowers individuals with disabilities by ensuring that they are the ultimate decision-makers but are provided support from one or more others, giving them the assistance they need to make decisions for themselves.
BILL OF RIGHTS FOR
PERSONS UNDER GUARDIANSHIP
Bill of Rights for Wards
24 Specific Rights

• The bill of rights for persons under guardianship were compiled in one statute so that it would be easier for wards, guardians, and attorneys to be aware of the rights of wards.

• State and federal rights for persons under guardianship are now listed in the Texas Estates Code.

Enforcing the Bill of Rights

• A person under guardianship may file a complaint with the probate court regarding a violation of any of the rights.

• A person under guardianship may petition the court and retain counsel to represent their interest “for other appropriate relief” under the Bill of Rights.

*Tex. Est. Code § 1151.351(b)(10) & (17)*
Questions

a) Your client does not have a guardian or appropriate supports and you think he lacks decision-making capacity.

b) Your client does not have a guardian, may lack decision making capacity, and is a victim of exploitation.

c) Your client has a supporter who may be making decisions that are contrary to his expressed preferences or interests.

d) Your client has a guardian but you think he is capable of making decisions for herself.
Ethical Practices & Standards

The CRC Code of Ethics

The basic objectives of the Code are to:

(1) promote public welfare by specifying ethical behavior expected of professionals;

(2) establish principles that define ethical behavior and best practices of professionals;

(3) serve as an ethical guide designed to professionals in constructing a professional course of action that best serves those utilizing services; and,

(4) serve as the basis for the processing of alleged Code violations by professionals.
The Primary Values that Serve as a Foundation of the Code of Ethics:

• Respecting human rights and dignity;
• Ensuring the integrity of all professional relationships;
• Acting to alleviate personal distress and suffering;
• Enhancing the quality of professional knowledge and its application to increase professional and personal effectiveness;
• Appreciating the diversity of human experience and culture; and,
• Advocating for the fair and adequate provision of services.
Six Principals of Ethical Behavior
Autonomy

Client’s freedom to choose own rehabilitation, mental health services, plans, goals

• Obligation of counselor to promote self-determination and disclosure of all appropriate information.

• Obtaining informed consent and keeping all records confidential.

• Assuring that client is provided the opportunity to either consent to or provide assent to decisions regarding services, care, and goals.

• Acknowledging the role of “self-inflicted risk” in lives of persons with disability and rehabilitation settings.
Non-Maleficence

The Professional’s obligation not to cause physical or emotional harm to others

- Potential for harm when client is provided with inappropriate services.
- Professional’s willful act that might cause harm to others such as misuse of assessment data, or not monitoring a rehabilitation plan.
- Avoiding a dual relationship with a client.
- Avoiding the most restrictive forms of autonomy limitations if client capacity is limited.
Beneficence

*The Professional’s obligation to contribute to the welfare of client*

- Hospitalizing a suicidal client.
- Doing good and being helpful with clients.
- Assisting the client and/or family in initiating guardianship process if client’s limitation of capacity presents a serious risk or danger.
Justice

The Professional’s obligation to act in a manner that is fair and equal

• Counselor’s obligation to provide equal access to treatment.
• Assisting the client in self-advocacy or advocating on behalf of the client.
• Assuring that the client has adequate legal representation to preserve her rights in any legal processes related to her legal status.
Fidelity

The Professional’s obligation to keep promises and commitments

• Professional’s obligation to be honest.
• Respecting client’s privacy.
Veracity

The Professional’s obligation to be honest with clients

- Providing detailed professional disclosure.
- Describing fully who will have access to client files.
- Being honest with the client regarding the process of capacity determination and its risks and benefits for him.
Core CRCC Ethical Standards

- A.1.a - Primary Responsibility
- A.1.d - Autonomy
- A.4.b - Personal Values
- A.4.f - Role Changes in the Professional Relationship
- D.5.d - Exploitation of Others
- D.5.e - Conflict of Interest
Ethical Standards Related to Competency & Supported Decision-Making

- A.3.b - Informed Consent
- A.3.c - Developmental and Cultural Sensitivity
- A.3.d - Inability to Give Consent
- G.3.a - Proper Diagnosis
- G.3.c - Historical and Social Prejudices in Diagnosis and the Diagnosis of Pathology
- G.4.a - Limits of Competence
Ethical Standards Related to Advocacy

- C.1.b - Advocacy
- C.1.c - Advocacy in Own Agency
- C.1.d - Advocacy and Confidentiality
- C.1.e - Areas of Knowledge and Competency
- C.2.a - Counseling Practice
- C.2.b - Barriers to Access
- E.2.a - Consultation as an Option
- L.2.e - Consultation
Examples
Questions

a) Your client does not have a guardian or appropriate supports and you think he lacks decision-making capacity.

b) Your client does not have a guardian, may lack decision making capacity, and is a victim of exploitation.

c) Your client has a supporter who may be making decisions that are contrary to the his expressed preferences or interests.

d) Your client has a guardian but you think he is capable of making decisions for herself.
You receive a referral on a 19 year old female with a long history of substance abuse. She has an 11th grade education, no vocational training or job history; has a diagnosis of substance abuse; a moderate TBI due to a car accident. If your task as Ruth’s counselor is to develop a comprehensive plan for her.
Questions

1. Which diagnosis is most or least important or relevant in deciding the degree of Ruth’s mental capacity?

2. What type of evaluation(s) would be helpful in determining Ruth’s mental capacity?

3. How would you involve Ruth in the decision-making process?

4. What type of guardianship arrangements or supported decision making would you recommend?
Grace

Grace is a woman with mild ID in her 40's. Her mother, who she lived with and was her representative payee for Social Security, recently passed away.

She went to live with her father who became concerned about her online relationship with a man from out of state. Grace has expressed that she is in love with this man although they have not met and she wants to live with him.

Grace and her father have had a difficult relationship, he and her mother separated when Grace was a young child and there were allegations of domestic abuse at that time. Her father has discussed guardianship as a possible way to prevent Grace from becoming anymore involved with this online romance.
Jim

Jim is a 32 year old man, who has been diagnosed with Borderline Personality Disorder, Bi-Polar Disorder, a Borderline Intellectual Functioning, Substance Abuse, and Nicotine Dependence.

Jim has lived independently in an apartment with his wife of 6 years who also has multiple disabilities that include Mild Intellectual Disability, Obesity, and High Blood Pressure. You are Jim’s counselor and your task is to develop a comprehensive plan for him. However, after a review of his records, you become aware that: (a) Jim and his wife frequently argue and fight, (b) he has a history of psychiatric relapse (he averages 1-2 hospitalizations per year), (c) Jim is noncompliant with his psychotropic and bi-polar medications, and (d) Jim’s chronic and persistent mental health conditions are preventing him from being gainfully employed because of his limited education, work history (unskilled work), no transferable skills to higher level occupations, and his low impulse control and behaviors where he cannot get along with supervisors and co-workers.
Questions

1. What other information about Jim would be useful to know about Jim?

2. What would we anticipate or envision (hypothetically) Jim’s decision-making capacity?

3. How does Jim’s current mental functioning affect his decision-making capacity?

4. What ethical issues would you need to address in working with Jim?
You have been working with Julie, a 28 year old young woman with a TBI, whose mother (and guardian) has requested weight loss as a new treatment plan goal. This is her expectation despite the fact that Julie has been moderately overweight since her teens. Mom indicates significant concern about her daughter’s weight and details a highly restrictive diet plan in order to help her daughter lose weight. Mom has indicated she will be in charge of the diet, there will be no cheat days, and she will determine the amount of calories her daughter can consume.
Questions

• As the guardian, what rights does Mom have relative to Julie’s diet?

• How do you your ethical versus the legal obligations compare in this situation?

• How might you involve Julie in the decision-making process relative to the proposed diet?

• As a professional, what role could you play in this process?
Resources


THANK YOU