Ethics in Physical Therapy:

How to Navigate as a Licensed Therapist

Daniel Hirsch, PT, DPT, CHA, OHCC

Chapter 1: Ethical Spectrum

How is ethics defined?

Merriam-Webster:

"Ethics plural in form but singular or plural in construction: the discipline dealing with what is good and bad and with moral duty and obligation."

Encyclopedia Britannica:

"The term ethics may refer to the philosophical study of the concepts of moral right and wrong and moral good and bad."

*"I'm so **Excited** about **Ethics**!"*

In order to meaningfully improve ethical decision making and ultimately behavior, interventions designed to decrease and avoid misconduct should focus on changing the way we all think about indistinct or unclear issues.

What personal history is influencing our ethical decision making process?

External Factors:

- Professional Code of Conduct
- Company Mission
- Business Partners/Vendors

Internal Factors:

- *Morals*
- *Values*
- *Beliefs*

Goal:

1. Achieving victory through success
2. To be an industry leader
3. A respected and influential provider

Expectations around the result…can lead us to cheat during the movement towards success.

1. Comes down to how do we improve our "performance" as a professional?
2. What business strategies are we implementing in our practice?
3. Are we using prohibited or illegal business schemes to increase profits?
4. Are we neglecting to properly secure protected health information?

"The pressure to win produces a totally different effect."

Vince Lombardi, famously said: "Winning isn't everything, it's the only thing."

So we have to ask:

- Does the end justifies the means?
- What if you do not get caught?
- Is it ok as long as everyone is doing it too?

If ethics is a conscious activity that requires an ongoing personal evaluation for each task, how then do we obtain the discipline to provide high quality skilled therapy services? Especially considering we are such a diverse population with diverse societal values.

- Code of Ethics and Guide for Professional Conduct
- Standards of Ethical Conduct for the PTA
- Values-Based Behaviors for the PTA
- Core Values for the PT and PTA
- Standards of Practice for Physical Therapy

How is our earlier education impacting higher education decisions?

According to the International Center for Academic Integrity, over the past 12 years:

"Surveys of over 70,000 high school students at over 24 high schools in the United States demonstrated that 64 percent of students admitted to cheating on a test, 58 percent admitted to plagiarism and 95 percent said they participated in some form of cheating, whether it was on a test, plagiarism or copying homework."

https://www.academicintegrity.org/statistics/

With over 71,000 undergraduate students surveyed, 30% admitted to cheating on tests and 62% admitted to cheating on written assignments.

Over 17,000 graduate students were surveyed and 17% admitted to cheating on tests, while 40% admitted to cheating on written assignments.

Why is the lack of integrity so pervasive among high school, undergraduate and gradate students?

https://www.academicintegrity.org/statistics/

According the NCAA, nearly eight million students currently participate in high school athletics in the United States. More than 480,000 compete as NCAA college athletes.

Sport programs at all levels often include standards for academic misconduct, academic integrity and enhanced prevention/detection processes.

What are the thought processes concerning rule adherence, ethical decision making and following the guidelines to achieve one's goals?

http://www.ncaa.org/about/resources/research/estimated-probability-competing-college-athletics#:~:text=Nearly%20eight%20million%20students%20currently,the%20professional%20or%20Olympic%20level.

Ernst & Young surveyed 821 high-level executives and found that a whopping 90% of women sampled played sports. Among women currently holding a C-suite position, this proportion rose to 96%.

What about the research that demonstrates greater rule violating behavior in athletes?

What happens to the ethical decision making process when students play sports?

The Risk Assessment: If high school athletes on average have higher GPAs, less missed days of school, greater overall social relationships and more extensive experiential learning including time management and leadership roles…

- Referring physicians
- Hospital & Healthcare Organizations
- Insurance Companies/Payors
- EMR Provider/Vendor
- 3rd Party Billing Company
- IT security
- Managing Partners/Board of Directors

"The instinctive fear of failure will allow us to do nearly anything to not lose."

- Attitude
- Emotion
- Reflexes
- Values
- Beliefs
- Decision making process

How do each of these motivate you?

- Is the environment in which you practice, accepting of an ethical culture?
- How is this embraced?
- Do staff receive opportunities for this development/awareness?
- Are educational opportunities specific to the environment in which you practice?
- What are the types of interactions across the age spectrum that you see?

According to Stanford Children's Health, "in the U.S., about 30 million children and teens participate in some form of organized sports, and more than 3.5 million injuries each year, which cause some loss of time of participation, are experienced by the participants. Almost one-third of all injuries incurred in childhood are sports-related injuries."

John Hopkins Medicine reports "more than 775,000 children, ages 14 and younger, are treated in hospital emergency rooms for sports-related injuries each year".

Chapter 2: APTA Code of Ethics and Guide for Professional Conduct

The APTA says that they are the "definitive source for standards of ethics and professionalism in the physical therapy profession."

As of May, 2019, the U.S. Bureau of Labor Statistics says that there are 233,350 physical therapists and 96,840 physical therapy assistants employed in the country.

The APTA currently promotes their membership to be over 100,000 physical therapists, physical therapy assistants and students of physical therapy.

So where are the 2/3 majority of therapists receiving the ethics and professionalism information from?

- Code of Ethics for the Physical Therapist– Revised in June 2019
- Standards of Ethical Conduct for the PTA - Revised June 2019
- Values-Based Behaviors for the PTA – Revised August 2018
- Core Values for the PT and PTA -Revised September 2019
- Standards of Practice for Physical Therapy - Revised March 2019

&

#1: Physical therapists shall **respect** the inherent dignity and rights of all individuals.

#2: Physical therapists shall be **trustworthy** and **compassionate** in addressing the rights and needs of patients and clients.

#3: Physical therapists shall be **accountable** for making sound professional judgments.

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

#5: Physical therapists shall fulfill their **legal and professional obligations.**

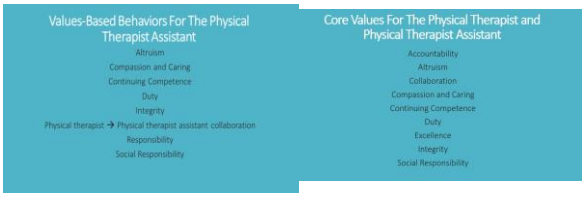
#6: Physical therapists shall **enhance their expertise** through the lifelong acquisition and refinement of knowledge, skills, abilities, and professional behaviors.

#7: Physical therapists shall **promote organizational behaviors and business practices** that benefit patients and clients and society.

#8: Physical therapists shall **participate in efforts** to meet the health needs of people locally, nationally, or globally.

Altruism
Compassion and Caring
Continuing Competence
Duty
Integrity
PT → PTA Collaboration
Responsibility
Social Responsibility

Accountability
Altruism
Collaboration
Compassion and Caring
Continuing Competence
Duty
Excellence
Integrity
Social Responsibility



"These standards are the profession's statement of conditions and performances that are essential for provision of high-quality professional service to society, and they provide a foundation for assessment of physical therapist practice."

Categories:

1. Ethical/Legal Considerations
2. Administration of the Physical Therapy Service
3. Patient and Client Management
4. Education
5. Advocacy
6. Research
7. Community Responsibility

Highlights:

- The APTA Guide for Professional Conduct was created to serve as way to help physical therapists interpret the Code of Ethics for the Physical Therapist.
- It provides a framework for therapist to help determine the appropriateness of their conduct.
- The Guide also assists in the professional development of physical therapist students.
- Applies to all physical therapists
- Designed to assist a physical therapist in applying general ethical principles to specific situations

Chapter 3: HIPAA

HIPAA was created to protect the privacy of personal health information and to promote standardization and efficiency in the healthcare industry.

In order to promote ethical decision making, title II of HIPAA, called "Preventing Health Care Fraud and Abuse," includes a bundle of offenses, enhanced penalties, increased funding of investigations, and new enforcement mechanisms to ensure HIPAA is followed and to strongly discourage improper practices.

A major goal of HIPAA is to make it easier for individuals to keep their health insurance, protect the confidentiality and security of healthcare information, and to help the healthcare industry control administrative costs

Who is subject to HIPAA? Almost everyone!!!

Insurance companies, self-insured health plans and small physician practices are all considered covered entities under HIPAA.

There are three categories of covered entities:

1) Healthcare plans
2) Healthcare providers
3) Clearinghouses

HIPAA also applies to any company that operates healthcare treatment facilities on-site for its employees. For example, if an employer or school operates an on-site clinic for its employees/staff, that clinic would be considered is a covered entity, and subject to HIPAA rules.

HIPAA protects our patient's rights to the use and disclosure of their Protected Health Information ("PHI"). PHI is information that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual.

HIPAA protects information that qualifies as PHI; essentially, any part of an individual's medical record or payment history. When a therapist completes a note inside a medical chart, when the front desk staff enters patient/health-insurance information into the computer or when a therapist discusses a patient's pathology – any identifiable health information becomes PHI under HIPAA

Things to remember:

1) Only access PHI to the extent necessary to perform job-related functions;
2) Obtain a patient's written authorization whenever using and/or disclosing PHI in a manner not otherwise permitted by the HIPAA Privacy Rule, such as for marketing purposes and/or disclosing PHI to a unauthorized third party;
3) Destroy PHI once it is no longer needed;
4) Take steps to verify contact information prior to disclosing PHI by fax, phone, text message, and/or e-mail to avoid disclosing PHI to an unintended recipient;
5) Secure work areas by keeping documents containing PHI in a locked cabinet and maintaining strong passwords on electronic systems;
6) Best practice is for PHI to never be removed from the facility and/or workplace under any circumstances; and
7) Take special precautions while working on a company issued laptop outside the facility or at home to ensure that PHI on a company issued laptop is properly safeguarded.

All forms of PHI are protected. This includes any verbal, written or even electronic

Although there are a few exceptions, patients are generally guaranteed access to their own PHI. Depending on the state in which you practice, medical record requests must be appropriately fulfilled. Details to be aware of:

- Who is making the request
- Length of time to comply
- Allowable charges
- Release of records
- Storage of records
- Documenting the process

Ethical considerations?

HIPAA has two separate but interrelated rules called Privacy and Security.

- The Privacy Rule covers PHI in all forms.
- The Security Rule covers only electronic PHI.

Privacy Rule: This addresses the use and disclosure of PHI by covered entities. These covered entities can use and disclose an individual's PHI only under these conditions:

1. To communicate with the patient about PHI.
2. After receiving the patient's authorization (some exceptions apply).
3. Without a patient's authorization for treatment, payment and operations (again, some exceptions apply).

Other Considerations:

1. Disclosing a pediatric patient's PHI to a parent or legal guardian is often determined by each state.
2. Disclosing/requesting PHI from one covered entity to another, we must take all reasonable efforts to limit the amount/use of PHI in accordance with a minimum necessary standard.
3. Written authorization is not required for use and disclosure of PHI for treatment, payment, and operations, but individual state laws may detail requirements.

A covered entity must take reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

PHI should not be used or disclosed when it is not necessary to satisfy a particular purpose or carry out a function.

How can we provide ethical customer service when often times a family member trying to help does not have authorization to receive PHI?

The minimum necessary standard does not apply to:

- Disclosures to or requests by a health care provider for treatment;
- Uses or disclosures made to the individual;
- Uses or disclosures made pursuant to an authorization;
- Disclosures made to the Secretary of the Department of Health and Human Services;
- Uses or disclosures that are required by law; and
- Uses or disclosures that are required for compliance with applicable requirements

The Security Rule: It addresses the creation, receipt, use, maintenance and transmission of E-PHI.

1. Ensure the confidentiality, integrity, and availability of all PHI that a covered entity creates, receives, maintains or transmits;
2. Identify and protect against reasonably anticipated threats to the security or integrity of the information;
3. Protect against reasonably anticipated, impermissible uses or disclosures; and
4. Ensure workforce compliance.

Other Considerations:

1. This Rule not only applies to covered entities, but also to Business Associates.
2. This Rule requires covered entities to maintain **reasonable and appropriate** administrative, technical and physical safeguards for protecting PHI.

The Security Rule: Requires that you protect PHI from unauthorized access and environmental hazards by implementing physical and technical safeguards.

Examples of Physical Safeguards:

1. Facility access controls
2. Workstation use
3. Physical workstation security
4. Device and media controls

Examples of Technical Safeguards:

1. Access controls
2. Audit controls
3. Integrity controls
4. Transmission security

The Security Rule: Also requires **administrative safeguards** to be implemented which include the following:

Security Management Process — A covered entity must identify and analyze potential risks to PHI, and it must implement security measures that reduce risks and vulnerabilities to a reasonable and appropriate level.

Security Officer — Designating a Security Officer to be responsible for the development and implementation of security policies.

Information Access Management — Consistent with the Privacy Rule standard limiting uses and disclosures of PHI to the minimum necessary, the Security Rule requires a covered entity to implement policies and procedures for authorizing access to PHI only when such access is appropriate based on the user or recipient's role .

Workforce Training and Management — A covered entity must provide for appropriate authorization and supervision of workforce members who work with PHI. A covered entity must train all workforce members regarding its security policies and procedures, and must have and apply appropriate sanctions against workforce members who violate its policies and procedures.

Evaluation — A covered entity must perform a periodic assessment of how well its security policies and procedures meet the requirements of the Security Rule.

A breach is an impermissible use, or disclosure of an individual's PHI that compromises its security or privacy.

An impermissible use or disclosure is *not considered* a breach if it was:

1. An unintentional use or disclosure of PHI by an employee that was made in good faith and within the scope of authority;
2. An inadvertent use or disclosure by an authorized individual to another authorized individual at the same covered entity or business associate and not further used or disclosed; or
3. The covered entity or business associate has a good faith belief that the unauthorized person to whom the disclosure was made, would not have been able to retain the information.

If the use or disclosure does not qualify for an exception, it is presumed to be a breach, unless the covered entity or business associate demonstrates that there is a low probability that the PHI has been compromised, based on a risk assessment that addresses, at a minimum:

1. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
2. The unauthorized person who used the PHI or to whom the disclosure was made;
3. Whether the PHI was actually acquired or viewed; and
4. The extent to which the risk to the PHI has been mitigated.

https://www.hhs.gov/hipaa/for-professionals/breach-notification/index.html

1. What happens if a work laptop with patient information is stolen?
2. Mobile phone communication is common with patients and referral sources, but what if you text the wrong information or send an email to a recipient?
3. Recently, past medical history, which was previously highly protected, may now be publically discussed. How does that information remain appropriately secured?
4. IT data security does not just impact patients, but also employees. How is the company protecting employee data and information?

A HIPAA Authorization is required by the Privacy Rule for uses and disclosures of PHI not otherwise allowed by the Privacy Rule. An authorization is a detailed document that gives covered entities permission to use PHI for specified purposes, which are **generally other than** treatment, payment, or health care operations, or to disclose PHI to a third party specified by the individual.

For example, if a family member is assisting a patient of yours and requests a discussion regarding your patient and/or requests the patient's medical records, the patient's PHI cannot be disclosed to the family member without written authorization from the patient.

Other Considerations:

PHI must NOT be discussed with or disclosed to parents of adult children (18 years of age or older) OR a patient's spouse without written authorization from the patient. For example, if a husband requests a discussion with the therapist regarding his wife's care and/or requests the wife's medical records, the therapist must NOT discuss the wife's care with the husband and/or provide a copy of the wife's medical records to the husband without written authorization from the wife.

The following are NOT subject to HIPAA and its requirements, so you need to obtain a HIPAA Authorization from the patient prior to disclosing the patient's PHI to any of these listed below:

1. Coverage only for accident, or disability income insurance, or any combination thereof.
2. Coverage issued as a supplement to liability insurance.
3. Liability insurance, including general liability insurance and automobile liability insurance.
4. Workers' compensation or comparable insurance.
5. Automobile medical payment insurance.
6. Credit-only insurance.
7. Coverage for on-site medical clinics.
8. Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

The core elements of a valid HIPAA authorization include:

1. A meaningful description of the information to be disclosed;
2. The name of the individual or the name of the person authorized to make the requested disclosure;
3. The name or other identification of the recipient of the information;
4. A description of each purpose of the disclosure (The statement "at the request of the individual" is sufficient when the individual initiates the authorization and does not, or elects not to, provide a statement of the purpose);
5. An expiration date or an expiration event that relates to the individual;
6. A signature of the individual or their personal representative (someone authorized to make health care decisions on behalf of the individual) and the date.

If one fails to comply with HIPAA standards, both Criminal and Civil penalties may be fined.

Civil Penalties:

1. They range from $100 to $50,000 for each violation up to $1.5 million per year for all violations of an identical provision
2. They are based on a tiered approach, depending on the type of violation:
3. Fines for "reasonable cause" violations may be $1,000 - $50,000 per violation and up to $1,500,000 for identical provisions during a calendar year;
4. Mandatory fines for "willful neglect" (but rectified) violations are $10,000 - $50,000 per violation and up to $1,500,000 for identical provisions during a calendar year; and
5. Mandatory Fines for "willful neglect" (and un-rectified) violations are not less than $50,000 per violation and up to $1,500,000 for identical provisions during a calendar year.

Criminal Penalties:

For a basic offense fines may include costs of up to $50,000 and/or imprisonment for up to one year;

Criminal penalties for an offense committed under false pretenses may include a fine of up to $100,000 and/or imprisonment for up to five years; and

Criminal penalties for an offense committed with the intent to use PHI for one's commercial advantage may include a fine of up to $250,000 and/or imprisonment for up to ten years.

Because you are a covered entity, you must provide a **Notice of Privacy Practices** ("NPP") to individuals with whom you have a direct treatment relationship. This includes:

- Provide the NPP at enrollment, within 60 days of a material revision, and at least every three years;
- Provide the current NPP to anyone who requests it and by making copies available at the front desk;
- Display the current NPP at the front desk area;
- Post the NPP on any website your company maintains for customer-service or benefits information, and honor requests for the NPP from those accessing the website;
- Document compliance by retaining copies of the issued notices; and
- Make a good-faith effort to obtain a patient's **written acknowledgment** of receiving the NPP.

The NPP must include, but is not limited to, the following:

- How the covered entity may use and disclose PHI about an individual.
- The individual's rights with respect to the information and how the individual may exercise these rights, including how the individual may complain to the covered entity.
- The covered entity's legal duties with respect to the information, including a statement that the covered entity is required by law to maintain the privacy of PHI.
- A point of contact who can provide individuals with further information about the covered entity's privacy policies.

Other Considerations:

State laws about maintaining confidentiality and privacy of patients' information may be stricter than Federal standards.

The Standard: Obtaining a written acknowledgment of Receipt of Notice of Privacy Practices

As a general rule, all patients should acknowledge in writing that they receiving a NPP at the first delivery of service.

In emergency-treatment situations, therapists may obtain the acknowledgment as soon as reasonably feasible. Currently, if a patient's first contact with a provider is by telephone, the provider may mail the NPP to the patient afterwards.

If the patient fails to return the acknowledgment, the provider will be considered to have made a good-faith attempt to obtain the acknowledgment.

If the patient refuses to provide written acknowledgment of receipt of the NPP, the provider should document the attempt and the reason the acknowledgment was not obtained.

- As healthcare professionals, we must always manage PHI in accordance with HIPAA regulations.
- Patients have the right, upon request, to their PHI.
- End-to-end encryption should always be used when you send electronic information (emails) .
- Assign a compliance officer to monitor PHI procedures for HIPAA compliance.

What dilemmas around confidentiality arise when a conflict of interest or patient safety occurs?

Does your company have a policy for maintaining patient confidentiality?

https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html

Chapter 4: Coding, Billing & Documentation

A few questions to begin with:

1. What does coding, billing and documentation have to do with ethics?
2. Who determines what standards are applied to how we code, bill and document skilled therapy services?
3. Which setting does this education/learning actually take place?
4. What resources are available to help guide me in order to perform these "non-clinical" job responsibilities?

The fundamentals of the selection process for coding:

ICD-10-CM is a category of codes used to describe and represent the type of injury, pathology or disability we are planning on treating throughout an episode of care. The transition from ICD-9 occurred in 2015.

Our focus will remain on therapy-specific coding:

- Search for the code which represents the primary diagnosis
- Each code starts with a letter which is followed by two numbers (**this equals category**).
- After the category is found, we have a decimal point followed by more numbers (this equals **the subcategory).**
- A final character represents the information about the episode of care (not always used) such as an initial encounter, subsequent encounter or sequela.

Example Breakdown: M25.511

Definition: Pain in Right Shoulder

1) M = Diseases of the musculoskeletal system and connective tissue
2) 25 = Other joint disorder
3) .51 = Shoulder Pain
4) .001 – Right Side

The importance of accurate and specific coding allows…

The majority of therapy-specific codes are found in the M-class of codes.

A few common exceptions include:

R26.2 = Difficulty walking

R29.3 = Abnormal posture

What about the medical diagnosis, isn't that more important?

https://icd10cmtool.cdc.gov/?fy=FY2020&q=M16.11

Documentation Overview:

- As a licensed therapist, it is part of your professional responsibility as well as a legal requirement to document appropriately.
- It ensures safety and provision of quality of care.
- It supports payment of services.
- It records communication between staff/team members.
- It demonstrates our professional judgment and knowledge.
- It highlights our skill and decision making process.

Other Considerations:

- Can the insurance payor understand our explanation of appropriately selected services?
- Are we compliant with all local, state and federal laws and regulations?

Documentation Requirements Must Include:

1) The time, date and therapist signature
2) Medical necessity for treatment (is it considered reasonable and necessary)
3) A need for skilled therapy services
4) Objective progression with measurements related to a functional deficit
5) Prior level of function
6) Current level of function
7) A plan of care appropriate for each individual patient
8) A comprehensive and signed plan of care (POC)

What's the Difference?

- A physician referral or order provides evidence for the need of care.
- The signed POC provides evidence and approval of our plan by the physician.

Evaluation in 4 Simple Parts:

1) **Subjective Exam:** Onset date, chief complaint, prior & current level of function, social/surgical/medical history, barriers and co-morbidities, communication limitations & pain.

2) **Objective Measurements**: Special Tests and Outcome tools

3) **Assessment:** Diagnosis, Prognosis, Impairments, Deficits and Complexities with Functional & Measureable Goals.

4) **Plan of Care:** Type of treatment or interventions with amount/frequency/duration. Patient/family education with advice or referral made.

Ethical Considerations:
How do we perform an ethical evaluation?

Follow-Up Visit:

1) **Subjective**: What subjective information is being reported or observed from the patient (Ex: Pain)?
2) **Objective**: What tests, treatments or interventions are being provided (modalities, manual, Ther-ex/act, NMR)?
3) **Assessment:** Our rationale and justification for treatment as well as the patient's response or factors impacting the session.
4) **Plan:** What is the future plan of care? (should not be changing)

Ethical Considerations:
What happens during a "remote" office visit and procedures taken to protect patient privacy?
How can one manage an episode of care with both "remote" and "in-person" treatments?

Progress Report: (Medicare requires a PR every 10th visit)

- Identify the current date including the beginning of the reporting period.
- Everything required for a SOAP note is also to be included.
- Assessment of improvement (or lack of) toward functional goals since the last report (evaluation, progress or re-evaluation)
- Current status of each functional goal
- Updated plan of care (future treatment modifications)

Ethical Considerations:

What if the therapy assistant didn't know that the visit was a progress report visit?

Can the patient request more frequent progress reports?

Re-Evaluation:

When it is appropriate to perform and bill for a re-evaluation?

Re-evaluate a patient if a condition has changed significantly, new clinical findings have surfaced or there is evidence of failure to respond to the therapeutic interventions outlined in the original plan of care.

A Re-Evaluation note is not necessary just because a 30-day time period has passed since the initial evaluation.

Discharge:

- Planned or unplanned?
- Required for each episode of care
- Needs to include a summary of progress, updated outcome tests, updated goals and an updated POC
- Your recommendations at Discharge
- The reason for the Discharge

Billing is most commonly performed through CPT Codes (Current Procedural Terminology)

- Origination: CPT codes are published by the American Medical Association (AMA). Each CPT code is a five digit numeric code, which describes a variety of medical procedures and services under public and private health insurance.
- CPT is the designated standard for the electronic reporting of health care professional services under the HIPAA.
- There is a CPT Advisory Committee
- One can request changes a to CPT Code
- Codes are updated on a routine basis.

There are **three categories** of CPT codes:
1) Codes that describe a procedure or service identified with a five-digit CPT code and a descriptor for that code
2) Supplemental tracking codes that can be used for performance measurement (optional)
3) Codes used for new and emerging technologies and are temporary codes

Ethical Considerations:
If CPT codes are independent of health insurance plans (not payor specific or payment policy issue), who monitors and controls the rules for each code/use?

Billing Basics:

"All billing needs to be justified and supported by clinical documentation based on Medical necessity."

Must Know Details:
1) What is the definition of the code?
2) Does the code require a modifier?
3) Are there coding edits that apply?
4) Is the code considered direct-contact?
5) Does the code require services to be provided in-person?
6) Is the code considered a timed-code?

Medicare Benefit Policy Manual, 2019

The Definition of Skilled Care:
"A clinician may not merely supervise, but must apply the skills of a therapist by actively participating in the treatment of the patient during each progress report period. In addition, a therapist's skills may be documented, for example, by the clinician's descriptions of their skilled treatment, the changes made to the treatment due to a clinician's assessment of the patient's needs on a particular treatment day or changes due to progress the clinician judged sufficient to modify the treatment toward the next more complex or difficult task."

Billing Code Choices:

Before billing, one must know what the rules are
- What guidance are you following (AMA vs Medicare)
- What payor contract billing rules apply

What resources are readily available for code description and proper use?
How are you tracking the utilization of different codes and their frequency?

Examples of Evaluation Codes:
97161 – PT Evaluation low complexity
97162 – PT Evaluation moderate complexity
97163 – PT Evaluation high complexity
97165 – OT Evaluation low complexity
97166 – OT Evaluation moderate complexity
97167 – OT Evaluation high complexity
92506 – Evaluation of speech, language, voice, communication, and/or auditory processing

Evaluation CPT Code Example:

97161: Physical Therapy Evaluation Low Complexity

History: This includes no personal factors and/or comorbidities that impact the POC
Examination: Assess using standardized tests and measurements addressing 1-2 elements of the following: Body structures and functions, activity limitation and/or participation restrictions
Presentation: A clinical presentation with stable and/or uncomplicated characteristics
Decision-Making: Clinical decision making of low complexity using standardized patient assessment and/or measurable assessment of functional outcome

Evaluation CPT Code Example:

97162: Physical Therapy Evaluation Moderate Complexity

History: This includes 1-2 personal factors and/or comorbidities that impact the POC
Examination: Assess using standardized tests and measurements addressing 3 or more elements of the following: Body structures and functions, activity limitation and or participation restrictions
Presentation: A clinical presentation with evolving and changing characteristics
Decision-Making: Clinical decision making of moderate complexity using standardized patient assessment and/or measurable assessment of functional outcome

Evaluation CPT Code Example:

97163: Physical Therapy Evaluation High Complexity

History: This includes 3 personal factors and/or comorbidities that impact the POC
Examination: Assess using standardized tests and measurements addressing 4 or more elements of the following: Body structures and functions, activity limitation and or participation restrictions
Presentation: A clinical presentation with unstable and unpredictable characteristics
Decision-Making: Clinical decision making of high complexity using standardized patient assessment and/or measurable assessment of functional outcome

Top 4 Treatment Codes Billed:

97140 - Manual therapy techniques such as mobilization, manipulation, manual lymphatic drainage, manual traction
97110 - Therapeutic procedure/exercise to develop strength and endurance, range of motion and flexibility
97112 - Neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture and/or proprioception for sitting and/or standing activities
97530 - Therapeutic activities with use of dynamic activities to improve functional performance

What do all of these codes have in common?

Ethical Considerations:
How are therapists able to manage a schedule with back-to-back-to-back patients all day and still be able to bill in an appropriate manner?

The Urban Legend Code:

97150 - Therapeutic group of 2 or more individuals - constant attendance at the same location (this code involves constant attendance by the therapist, but NOT required to have one->one contact)

1) Patients are not required to perform same activity
2) Document the purpose and number of patients in the group
3) Include a description of the skilled activity provided in the group setting

Technology & Their Ethical Use

Modalities New and Old

- Research efficacy/validity
- Evidence-based practice
- Reimbursement strategies
- Billing codes
- Patient instructions
- Documented use

Modalities Defined:

Regardless of the philosophical approach one takes to treating and managing patient care, modalities are a part of the allied healthcare professions.

A modality is a type of electrical, thermal or mechanical energy that causes physiological changes. It is used to relieve pain, improve circulation, decrease swelling, reduce muscle spasm, and deliver medication in conjunction with other procedures.

We need to record the anatomical location, intensity, frequency and duration of the modality provided as well as patient position, response or advice provided.

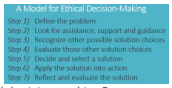
Ethical Considerations:

If you know that a certain Insurance payor denies a type of modality that you want to use on a particular patient; however strong evidence supports its use (considering the specific patient and other variables) do you still include it in your treatment plan?

Chapter 5: Ethical Decision-Making

Step 1) Define the problem
Step 2) Look for assistance, support and guidance
Step 3) Recognize other possible solution choices
Step 4) Evaluate those other solution choices
Step 5) Decide and select a solution
Step 6) Apply the solution
Step 7) Reflect and evaluate the solution

Is this the only process for ethical decision making process?



Advance Beneficiary Notice of Non-coverage (ABN)

Why are we including a waiver of liability discussion in ethical decision making?

A therapist needs to provide an ABN before a patient receives services if those services are believed not to be considered medically necessary (reasonable and necessary) by Medicare. An advance written notice of non-coverage allows the beneficiary the choice to still receive services even if they are not covered.

Interesting Note: A provider is not required to issue an ABN for services that are NEVER covered by Medicare. One may still provide as a courtesy to the patient, warning them of their possible financial responsibility.

Ethical Considerations:
As a precaution, can a provider issue an ABN on a routine basis to all Medicare patients to limit exposure of liability?

Functional Outcomes:

"Communicating how valuable and skillful our services are can, be a daily challenge"

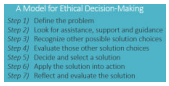
When we measure, record and report functional outcomes of our patients, we can clearly articulate the standards of ethical professional care.

What responsibilities do we have?

1) To our own patients
2) To the general public
3) Insurance payors/contracts
4) To ourselves
5) The profession

(Individual, Organization, Society)

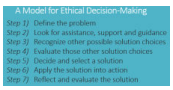
Functional Outcomes:



Functional outcomes are defined as the result of skilled care focused on the patient's physical ability

1) First, are you currently measuring functional outcomes?
2) How are you documenting and recording these outcomes?
3) Who is completing the outcome tool?
4) At what frequency are the functional outcomes being measured?
5) How are you tracking/submitting these outcome scores?

State Specific Standards:



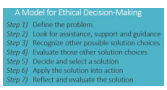
As a licensed professional, we are guided by the established state practice act in which we treat. This means that where you live, treat and are licensed absolutely determine what jurisdiction one falls under.

Each state practice act helps define our services

Resource Available:

https://www.fsbpt.org/Free-Resources/Licensing-Authorities-Contact-Information

State Specific Standards:



Each state practice act defines the scope of what licensed therapists are required to comply with. Most state practice acts include the minimum following topics:

- Licensing requirements
- Penalties for violations
- Supervision definitions
- Scope of practice
- Descriptions and definitions
- Exemptions
- Continuing education requirements
- Telehealth

A Model for Ethical Decision-Making
Step 1) Define the problem
Step 2) Look for assistance, support and guidance
Step 3) Recognize other possible solution choices
Step 4) Evaluate those other solution choices
Step 5) Decide and select a solution
Step 6) Apply the solution into action
Step 7) Reflect and evaluate the solution

Unique State Specific Standards:

False or Deceptive Advertising:

- Promoting items that are not necessary or medically indicated
- Abusing or exploiting the trust of a patient
- Making a false or misleading statement concerning the person's skill or efficacy of the treatment
- Representing superior skill if not supported by reliable data
- Making a scientific claim that cannot be supported by reliable data
- Representing self as specialist or certified if that is not the case
- Advertising in any other unethical or unprofessional manner
- Misrepresenting fees or charges

A Model for Ethical Decision-Making
Step 1) Define the problem
Step 2) Look for assistance, support and guidance
Step 3) Recognize other possible solution choices
Step 4) Evaluate those other solution choices
Step 5) Decide and select a solution
Step 6) Apply the solution into action
Step 7) Reflect and evaluate the solution

Telehealth:

http://ptcompact.org/

https://www.apta.org/your-practice/practice-models-and-settings/telehealth-practice

State vs. Federal Conversation:

Allowing to provide remote or telehealth therapy services is very different than being allowed to perform the same exact service by your individual state practice act. Please note this topic only reviews traditional telehealth therapy, not e-visits or other alternative visit classifications

So who has the last word on what services are allowed?

A Model for Ethical Decision-Making
Step 1) Define the problem
Step 2) Look for assistance, support and guidance
Step 3) Recognize other possible solution choices
Step 4) Evaluate those other solution choices
Step 5) Decide and select a solution
Step 6) Apply the solution into action
Step 7) Reflect and evaluate the solution

Telehealth:

Considerations when providing Telehealth therapy services:

- Modifiers
- In-person vs. remote billing codes
- IT security/video capabilities
- HIPAA compliance and platform use
- State practice act regulations
- Patient consent
- Insurance liability coverage
- Environmental and social details
- Policy and procedure
- Recording and documentation

A Model for Ethical Decision-Making

Step 1) Define the problem
Step 2) Look for assistance, support and guidance
Step 3) Recognize other possible solution choices
Step 4) Evaluate those other solution choices
Step 5) Decide and select a solution
Step 6) Apply the solution into action
Step 7) Reflect and evaluate the solution

Patient Interactions

A well cited and important article in the November 2017 *PT Journal*, titled, "Prevalence and Risk of Inappropriate Sexual Behavior of Patients Toward Physical Therapist Clinicians and Students in the United States," highlighted and quantified subjective observations, which was previously unknown over the last 20 years.

Conclusion:
The prevalence of inappropriate patient sexual behavior directed towards therapists and staff was astonishingly high.

What type of behavior does this include?

Why are therapists and staff exposed to this behavior also at significant risk for workplace violence?

A Model for Ethical Decision-Making

Step 1) Define the problem
Step 2) Look for assistance, support and guidance
Step 3) Recognize other possible solution choices
Step 4) Evaluate those other solution choices
Step 5) Decide and select a solution
Step 6) Apply the solution into action
Step 7) Reflect and evaluate the solution

Patient Interactions: Data Points

https://datausa.io/profile/soc/physical-therapists#demographics
Almost 70% of therapists are female → similar statistics to reported inappropriate patient behavior

Interesting Results:

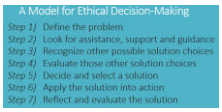
1. "Clinical inexperience is the most predictive factor determined by the risk models, explaining the most variability in risk."
2. "Entry-level training for inappropriate patient sexual behavior was not found to be a protective factor."

Chapter 6: Case Studies

A newly graduated physical therapist named Amy is evaluating and treating a 55 year old male right THR patient today in the clinic. Amy is well versed in orthopedic treatment and has successfully treated general orthopedic patients during the past 4 months. She has reviewed the surgical notes, post-op script, precautions and has prepared a private room for the patient. As part of her team, Brian is a talented PTA who often assists her patients when necessary as well as helps other patients of therapists in the clinic.

Other Considerations:

What has been arranged for a successful evaluation?
How could things go wrong?
Strategies to prevent inappropriate interactions?
What are the established company standards in place?
Additional ethical responsibilities?



https://www.justice.gov/usao-cdca/pr/returned-fugitive-sentenced-2-years-federal-prison-role-medicare-fraud-scheme-featuring

"Returned Fugitive Sentenced to 2½ Years in Federal Prison for Role In Medicare Fraud Scheme Featuring Bogus Physical Therapy Claims"

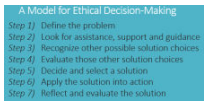
Case Summary:

A chiropractor was sentenced to federal prison for participating in a $15 million Medicare fraud scheme for submitting PT services that were not reimbursable or provided. Additionally, the fraud consisted of receiving illegal kickbacks in exchange for Medicare referrals.

The PT services that were billed were never provided to patients. Part of the scheme included hiring physical therapist to occasionally supervise unlicensed staff who performed services that were not reimbursable (unskilled) under Medicare rules and guidelines.

Penalties:

30 months in Federal Prison
Ordered to repay $690,519 in restitution to Medicare
Other involved parties ordered to repay $7,896,007 in restitution



https://www.justice.gov/opa/pr/diversicare-health-services-inc-agrees-pay-95-million-resolve-false-claims-act-allegations

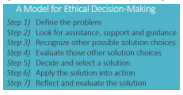
"Diversicare Health Services Inc. Agrees to Pay $9.5 Million to Resolve False Claims Act Allegations Relating to the Provision of Medically Unnecessary Rehabilitation Therapy Services"

Case Summary:

Allegations included violations of the False Claims Act, which occurred by knowingly submitting false claims to Medicare for therapy services that were not reasonable, necessary or skilled. Over a 5 year period, used a routine process for designating Medicare beneficiaries in the highest level of reimbursement ("ultra-high"), irrespective of the patient's actual need. The frequency, duration, intensity were determined not to be reasonable or necessary. Improper co-treatment between disciplines were also evident in order to achieve minute thresholds. Documentation audits discovered repetitive, unskilled ther-ex that were not consistent with a POC/goals.
Physician signatures and certification were discovered to be forged, photocopied and pre-signed.

Penalties:

5-year CIA (Corporate Integrity Agreement)
Over $1.5 million paid to the qui tam employees



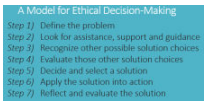
A post-pandemic decision:

As an essential healthcare provider, Holly is a physical therapist who works in a subacute facility in Texas. Throughout the Spring and Summer months of 2020, the subacute facility had to manage constantly changing local mandates, regulations and safety precautions. Federal and CDC guidance allowed helpful standards and content/posters to be publicly displayed. Many engineering and health protocols have enhanced the daily operations throughout the facility. All staff including Holly have been educated and trained on proper use of personal protective equipment and patient care techniques to limit unnecessary exposure. Daily screening procedures have been implemented through a self-questionnaire online app, which allows staff members to login and confirm their health status each day before work. Anyone who does not answer one of the questions correctly is simply not allowed to enter the facility and work their shift that day.

A post-pandemic decision:

Holly has a mortgage, bills and students loans to pay and cannot afford to miss work as an hourly employee.

- Does Holly always answer the daily questions honestly?
- Who is at risk if the questions are not answered accurately?
- What personal responsibilities does Holly have?
- What actions should the facility take if they discover staff are not self-reporting properly?



The Ethical Conflict of Interest:

Harrison is a reliable, dedicated and well respected PT working for an outpatient practice with 5 locations in Colorado. The business owners are friendly, easy to speak with and have complete trust in their staff to help grow the clinics. Harrison's wife is the proud owner of a cleaning and sanitizing company called 5280Cleaning, LLC, which services local commercial properties. The business owners have revised their policies and procedures and want to consolidate the different cleaning companies that they currently use for all 5 clinics. Harrison approaches the business owners and simply recommends that they use 5280Cleaning. The business owners appreciate the recommendation and agree to hire 5280Cleaning for their clinics. In the following three months, cleaning and sanitization are occurring daily, staff are happy working in safe healthcare facilities and things are going well.

The Ethical Conflict of Interest:

5280Cleaning, LLC is charging 20% more than comparable cleaning services in the local area for commercial properties.

- Is there a justification for the 20% increase is charges for the similar quality of services?
- Does Harrison have an obligation to disclose the relationship of his wife's company to the clinics business owners?
- What issues could have clouded the hiring and judgment to use 5280Cleaning, LLC?
- Who benefits from this relationship?

A Model for Ethical Decision-Making

Step 1) Define the problem
Step 2) Look for assistance, support and guidance
Step 3) Recognize other possible solution choices
Step 4) Evaluate those other solution choices
Step 5) Decide and select a solution
Step 6) Apply the solution into action
Step 7) Reflect and evaluate the solution

Chapter 7: How to view the ethical process

https://www.physio-pedia.com/Identifying_and_Analysing_an_Ethical_Issue

This ethical process is all about the impact of a decision.

We only technically control half of the equation.

How do we position ourselves to be successful?

Are we allowed to have loyalties?

The obvious question: **Who are we representing?**

What preconceptions or judgments are we making?

Each individual needs to reflect on specific dynamics and individualities

Let's take a moment to list our unique characteristics:

1) Me
2) You
3) And the other

What to ALWAYS AVOID
Quick fix – no
Misidentify – no

As an example, let's build an ethical practice "framework".

Foundation: Searching for perspective and try to understand the nature of the problem
Structure: Deciding and weighing options
Ceiling: Use thorough judgment and act

A Model for Ethical Decision-Making

Step 1) Define the problem
Step 2) Look for assistance, support and guidance
Step 3) Recognize other possible solution choices
Step 4) Evaluate those other solution choices
Step 5) Decide and select a solution
Step 6) Apply the solution into action
Step 7) Reflect and evaluate the solution

Chapter 8: Bridging the gap

References:

1. Ehrnborg C, Rosén T. Growth Horm IGF Res. 2009 Aug; 19(4):285-7.
2. Vargas-Mendoza N, Fregoso-Aguilar T, Madrigal-Santillán E, Morales-González Á, Morales-González JA. Ethical Concerns in Sport: When the Will to Win Exceed the Spirit of Sport. Behav Sci (Basel). 2018;8(9):78. Published 2018 Sep 3. doi:10.3390/bs8090078
3. Ethical issues in sports medicine: a review and justification for ethical decision making and reasoning. Greenfield BH, West CR Sports Health. 2012 Nov; 4(6):471-5.
4. Anderson L. Contractual obligations and the sharing of confidential health information in sport. J Med Ethics. 2008 Sep;34(9)
5. APTA Strategic Plan. (2020, May, 5th) The American Physical Therapy Association. Retrieved October 3rd, 2020 from URL https://www.apta.org/apta-and-you/leadership-and-governance/vision-mission-and-strategic-plan/strategic-plan
6. APTA Code of Ethics (2020, August, 12) The American Physical Therapy Association. Retrieved October 3rd, 2020 from URL https://www.apta.org/apta-and-you/leadership-and-governance/policies/code-of-ethics-for-the-physical-therapist
7. APTA Standards of Ethical Conduct for the PTA (June 1, 2019) The American Physical Therapy Association. Retrieved on October 19th, 2020 from URL https://www.apta.org/apta-and-you/leadership-and-governance/policies/standards-of-ethical-conduct-for-the-physical-therapist-assistant
8. APTA Values-Based Behaviors for the PTA (August 30, 2018) The American Physical Therapy Association. Retrieved on October 19th, 2020 from URL https://www.apta.org/your-practice/ethics-and-professionalism/values-based-behaviors-for-the-pta-pt-assistants
9. APTA Standards of Practice for Physical Therapy (September 20, 2019) The American Physical Therapy Association. Retrieved on October 19th, 2020 from URL https://www.apta.org/apta-and-you/leadership-and-governance/policies/standards-of-practice-pt
10. APTA Code Values for the PT and PTA (September 20, 2019) The American Physical Therapy Association. Retrieved on October 19th, 2020 from URL https://www.apta.org/apta-and-you/leadership-and-governance/policies/core-values-for-the-physical-therapist-and-physical-therapist-assistant
11. APTA Guide of Professional Conduct (June 1, 2012) The American Physical Therapy Association. Retrieved on October 28th, 2020 from URL https://www.apta.org/your-practice/ethics-and-professionalism/apta-guide-for-professional-conduct
12. APTA Guide for Conduct of the Physical Therapist Assistant (June 1, 2012) The American Physical Therapy Association. Retrieved on October 28th, 2020 from URL https://www.apta.org/your-practice/ethics-and-professionalism/apta-guide-for-conduct-of-the-physical-therapist-assistant
13. Jill S. Boissonnault, Zádee Cambier, Scott J. Hetzel, Margaret M. Plack, Prevalence and Risk of Inappropriate Sexual Behavior of Patients Toward Physical Therapist Clinicians and Students in the United States, Physical Therapy, Volume 97, Issue 11, November 2017, Pages 1084–1093.

14. Triezenberg, H. L. (1996). The identification of ethical issues in physical therapy practice. Physical Therapy, 76(10), 1097-1107.
15. Triezenberg, H. L. (2000). Beyond the code of ethics: educating physical therapists for their role as moral agents. Journal of Physical Therapy Education, 14(3), 48.
16. Barnitt, R. E. (2000). Facilitating ethical reasoning in student physical therapists. Journal of Physical Therapy Education, 14(3), 35.
17. Purtilo, R. B. (1974). Understanding ethical issues: the physical therapist as ethicist. Physical therapy, 54(3), 239-243.
18. Finch, E., Geddes, E. L., & Larin, H. (2005). Ethically-based clinical decision-making in physical therapy: process and issues. *Physiotherapy Theory and Practice*, *21*(3), 147-162.
19. Greenfield, B. (2007). The role of emotions in ethical decision making: implications for physical therapist education. Journal of Physical Therapy Education, 21(1), 14-21.
20. Mansbach, A., Bachner, Y. G., & Melzer, I. (2010). Physical therapy students' willingness to report misconduct to protect the patient's interests. Journal of medical ethics, 36(12), 802-805.
21. Medicare Claims Processing Manual, Chapter 5 - Part B Outpatient Rehabilitation and CORF/OPT Services. from URL https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c05.pdf
22. HIPAA for Professionals from URL https://www.hhs.gov/hipaa/for-professionals/index.html
23. Quick Safety: The optimal use if telehealth to deliver safe patient care. Issue 55, October, 7, 2020: from URL https://www.jointcommission.org/-/media/tjc/newsletters/quick-safety-55-telehealth-9-25-20-final.pdf?hsmi_source=newsletter&utm_medium=email&utm_campaign=name_telehealth_covid_19_loan_updates_ocr_right_of_access_investigations_&utm_term=%2Bjc%20-%19.
24. A Roadmap for New Physicians: Avoiding Medicre and Medicaid Fraud and Abuse. From URL https://oig.hhs.gov/compliance/physician-education/roadmap_web_version.pdf
25. CNA HealthPro and HPSO.Physical Therapy Liability, 2001-2010. from URL http://www.hpso.com/Documents/pdfs/CNA_CLS_PTReport_final_011312.pd
26. Beauchamp, T. L., & Childress, J. F. (2009). Principles of Biomedical Ethics (6th ed.). New York, N.Y.: Oxford University Press
27. Steinberg D. (2020) Ethics Consultation: Biomedical Ethics. In: The Multidisciplinary Nature of Morality and Applied Ethics. Springer, Chm.