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CNS 780 DG FA 2016
Assignment 5.1 - Know the Law Paper
11/17/2016

Introduction

The purpose of this paper is to demonstrate the skills of research, comprehension and articulation of laws for the state of Nebraska regarding the qualifications for licensure, definitions of practice, scope and limitations of practice and confidentiality concerns relevant to providing mental health services. I will demonstrate these skills by briefly introducing four topics and discussing their importance to the practice of counseling in that state. I will discuss each of these four topics in the paragraphs below, and then conclude with a brief summary of all that was discussed, and of what I have personally learned from this exercise.

Qualifications for Licensure

Professional competence is defined by Welfel (2013) as “a combination of knowledge, skill and diligence” (Remley, 2015, pp. 154-5). Competence in the practice of counseling is an essential component in the protection of dignity and in the promotion of welfare for clients (§A. 1.a.). It is because of this reality that the state of Nebraska has outlined three qualifications for licensure in the Mental Health Practice Act according to DHHS § 38-2122 (2008). The first is attaining a masters level degree, or a doctorate degree, “That consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from an approved educational program,” which is CACREP accredited (DHHS §38-2122(1)). The second is the completion of three thousand hours of supervised experience of which one thousand, five hundred must be direct contact hours. These hours are to be accumulated during the master’s degree program and the immediate years post graduation in the pursuit of licensure. The supervision must be provided by a qualified professional such as a licensed physician, licensed clinical psychologist, certified master social worker, certified professional counselor or a marriage and family therapist (DHHS, §38-2122(2)). The third and final qualification for licensure is the successful completion of an approved exam with a passing grade. It is the state board that determines which exams are approved (DHHS, §38-2122(3)). For those who have graduated, and have not yet attained the requisite three

thousand supervised hours of experience, a provisional license will be conferred that becomes void upon receipt of licensure (DHHS, §38-2132 (1), (2)). Additionally, supervision is a requirement and the supervisor must be named specifically (DHHS, §38-2132 (3)).

Definition and Scope of Mental Health Practice

Definitions matter. They matter in mental health practice as it is as much the purpose of regulatory boards and that of individual counselors to protect the dignity of clients as well as to promote their well being (§A.1.a.). To this end, the practice of clinical mental health counseling must be clearly defined. The scope, or boundaries, of practice must also be clearly defined.

The state of Nebraska has defined clinical mental health practice as “the assessment and treatment of mental and emotional disorders within the context of professional counseling theory and practice of individuals, couples, families, or groups” (DHHS, §38-2118). The state of Nebraska also includes brief descriptions of the kinds of activities in which mental health practitioners actively engage. These activities can be categorized as relational activities, appraisal activities, referral activities, research activities, therapeutic activities, vocational activities, personal rehabilitation activities and consulting activities.

Limitations of Practice

Just as important as scope of practice are the limitations of practice. Boundaries are defined by what is included just as much as they are defined by what is excluded. For this reason the State of Nebraska as clearly articulated the limitations of clinical mental health practice. § 38-2115 of the Mental Health Practice Act (2013) further defines the practice of clinical mental health as, “The provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations” (DHHS, §38-2115). In addition to this clarifying definition of scope, the state of Nebraska also provides limitations. They are:

“(a) The practice of psychology or medicine; (b) Prescribing drugs or electroconvulsive therapy; (c) Treating physical disease, injury or deformity; (d) Diagnosing major mental

illness or emotional disorders except in consultation with a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner; (e) Measuring personality or intelligence for the purpose of diagnosis or treatment planning; (f) Using psychotherapy with individuals suspected of having major mental or emotional disorders except in consultation with a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner; or (g) Using psychotherapy to treat the concomitants of organic illness except in consultation with a qualified physician or licensed psychologist” (DHHS, §38-2115 a-g).

It is very evident that each of these limitations is in accordance with the ACA Code of Ethics (2014) principle of *non-maleficence*, and concerned with clinical mental health practitioners practicing within the limits of their own competence (C.2.a).

Confidentiality and the Duty to Warn

The issue of confidentiality within the practice of clinical mental health, also has at its heart the protection of the individual dignity and the promotion of welfare of clients (A.1.a). The ACA Code of Ethics (2014) mandates the respect of privacy (B.1.b) and the respect of confidentiality (B.1.d) for clinical mental health practitioners for these reasons. It also outlines exceptions wherein it is ethical for clinical mental health practitioners to release privileged information under clearly defined and special circumstances. These clearly defined and special circumstances are: (1) Serious and foreseeable harm and legal requirements (B.1.a); (2) Confidentiality regarding end of life decisions (B.1.b); (3) Contagious and life threatening diseases (B.1.c); and (4) Court ordered disclosure (B.1.d). Minimal disclosure is mandated to the extent possible and with the client’s foreknowledge (B.2.e).

In accordance with these mandates, the state of Nebraska has seen fit to address the legalities of confidentiality and the duty to warn in the Mental Health Practice Act (2013). The commitment to confidentiality and the protection of privacy is unequivocally stated in §38-2136. “No person licensed or certified pursuant to the Mental Health Practice Act shall disclose any information he or she may have acquired from any person consulting him or her in his or her professional capacity” (DHHS, §38-2136). Four exceptions are clearly outlined as well. They are:

*“(1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly; (2) As such privilege is limited by the laws of the State of Nebraska or as the board may determine by rule and regulation; (3) When the person waives the privilege by bringing charges against the licensee; or (4) When there is a duty to warn **under the limited circumstances set forth in section 38-2137.**”*

In the Mental Health Practice Act (2013) the state of Nebraska also informs clinical mental health practitioners of their duty to warn. §38-2137 of the act provides limitation on liability for clinical mental health practitioners for failure to warn “**except** when the patient has communicated to the mental health practitioner a serious threat of physical violence against himself, herself, or a reasonably identifiable victim or victims” (DHHS, 38-2137). It can be inferred from this that a clinical mental health practitioner whose client has endorsed “a serious threat of physical violence against himself, herself or a reasonably identifiable victim or victims” must warn said individuals.

Summary and Conclusion

I believe that I have successfully and concisely summarized the importance four key issues relevant to providing mental health services in the state of Nebraska. Those key issues were: (1) Qualifications for licensure; (2) Definitions of practice; (3) Scope and limitations of practice; and (4) Confidentiality concerns including duty to warn issues. I will now discuss briefly what I have learned personally from this exercise.

This exercise has been personally encouraging for me. First I was impressed that the ACA Code of Ethics (2014) and the state laws of Nebraska were so complimentary of and congruent with the other. It seems the values set forth in the ACA Code of Ethics (2014) are taken seriously, upheld and cherished by the lawmakers of the state of Nebraska. I have appreciated how much care and thought has been exerted in the protection of clients. I have also appreciated the measures that have been taken to clearly define boundaries for clinical

mental practitioners in order to protect them from ignorance, incompetence and complacency in their practice.

References

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