



Hold My Gavel: Let's Talk Ethics

Hon. Judge Kate Huffman

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Disclosure



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Are Ethics Different in Treatment Courts?

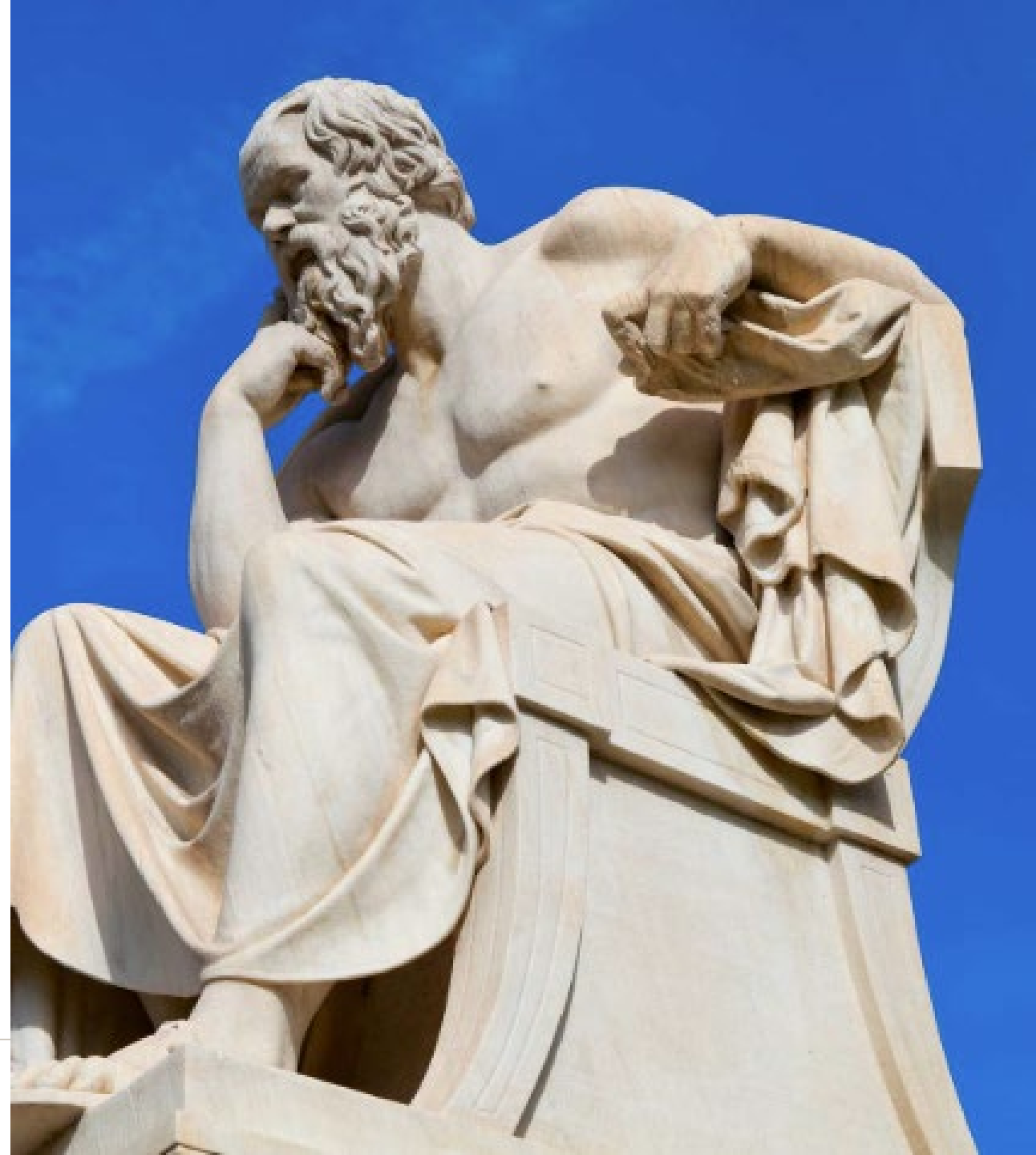


- The collaborative nature of treatment courts
- The enhanced relationship between judge and participant
- The community advocacy role of the treatment court judge



“Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.”

Socrates





**Impartial
But Not
Indifferent**

Judicial Conduct

The court must be “patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials and others.”

A judge must “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety.”





Respect for Time

“The first principle of courtesy is consideration of others.”

In Re Mullin, Texas Special Court of Review, 2015

Financial Sanctions

Suggesting that the Judge had “leaned into the idea of a debtors’ prison, the Ohio Supreme Court suspended a judge without pay for 18 months for collecting fines and court costs without considering ability to pay and threatening or imposing jail sentences to coerce payment.

Disciplinary Counsel v. Hoover, 2024-Ohio-4608

Denial of Visiting Privileges

Participant, who was known to the judge to be suicidal, was ordered to serve 28 days in custody for violating the drug court contract; in her written order, the judge changed the sentence to an indefinite term in custody with no telephone or visitation privileges. During the 73 days Participant spent in jail, she had no contact whatsoever with family, treatment providers or attorneys. Participant was only released when she was transferred to an in-patient treatment facility.

Judicial Qualification Committee described her as exhibiting “tyrannical partiality.”

Language Matters

“You have ‘meth teeth’”

“You’re an animal...You don’t have the integrity to talk to me”

During a treatment court hearing, judge stated to a female participant, “Sit on my lap if you want... no, no I take that back”



Avoid Stigmatizing Language

"Your drug screen is dirty."	<i>"I'm dirty. There is something wrong with me."</i>	"Your drug screen shows the presence of drugs."
"Did you take your pills today?"	<i>"I'm a failure. I'm a bad person. No one cares how the drugs make me feel."</i>	"Are the medications your doctor prescribed working well for you?"
"You didn't follow the contract, you're going to jail; we're done with you. There is nothing more we can do."	<i>"I'm hopeless. Why should I care how I behave in jail? They expect trouble anyway."</i>	"Maybe what we've been doing isn't the best way for us to support you. I'm going to ask you not to give up on recovery. We're not going to give up on you."
"I'm sending you for a mental health evaluation."	<i>"I must be crazy. There is something wrong with me that can't be fixed."</i>	"I'd like to refer you to a doctor who can help us better understand how to support you."



How Far Does the
“Therapeutic Court
Exception” to Ex Parte
Communication Extend?

**Ex parte: from one
side only**

Exercise Programs

A running club proposed to be led by the drug court judge, where the participants could receive pro-social credits necessary for graduation could lead to inappropriate ex-parte communication, an appearance of partiality toward those participating, and those unable or unwilling to participate could reasonably perceive they are disadvantaged



Social Media

Just don't do it!



Avoid Personal Relationships with Staff and Participants

Judge “severely reprimanded” for engaging in sexual relationship with the girlfriend of a treatment court participant

In Re Shaw, 192 A.3d 350 (Pennsylvania, 2018)

Judge indefinitely publicly censured and suspended without pay for engaging in an undisclosed sexual relationship with a clinician actively working as a member of his treatment court team.

In Re Estes, Massachusetts Supreme Judicial Court (2018)



The Independence of the Judiciary Must Remain

Financial Support

Judges must refrain from organizing non-profit corporations, directly soliciting donations, permitting their name/likeness/office from being used to solicit donations, and may not appear before legislative or administrative bodies encouraging funding or work for a non-profit corporation



A judge may not serve as a member or officer of the board of directors of a nonprofit corporation that provides services to the court under a contract with the court's funding authority.

Ohio Board of Professional Conduct, Opinion 2021-01 (February 12, 2021)

A court may not employ a person who is simultaneously employed by a nonprofit drug treatment center that has contracted with the court to provide services for its specialized drug court docket.

Ohio Board of Professional Conduct, Opinion 2017-06 (August 4, 2017)

Financial Support

A judge must avoid actively seeking funding for a behavioral health court, as direct solicitation of public and private entities to support the program compromises the judge's obligation to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary" as such conduct "undermines public confidence in the judiciary."

Kansas Judicial Ethics Opinion 187 (Dec. 21, 2023)

Support for Counseling Agency's Application for Certification

A judge may write a letter in support of a local counseling agency's application for approval as a certified behavioral health clinic, provided the judge has experience making referrals to the agency, the judge writes of personal observations, and the judge does not sign the agency's "form letter" in support of certification.

New York Ethics Opinion 24-113 (June 20, 2024)

Roles and Responsibilities of the Judge

- Judge makes final decisions on matters affecting a participant's legal status:
 - Incentives
 - Sanctions
 - Disposition
- Careful consideration of all team members input aids in decision making.
- Under no circumstance should a judge order deny or alter treatment conditions independently of clinical advice.



It's Not Your Call

Standard: Substance Use, Mental Health and Trauma Treatment and Recovery Management; Medication for Addiction Treatment

“Treatment court staff rely exclusively on the judgment of medical practitioners in determining whether a participant needs MAT, the choice of medication, the dose and duration of the medication regimen, and whether to reduce or discontinue the regimen... All members of the treatment court team receive at least annual training on how to enhance program utilization of MAT and ensure safe and effective medication practices.”



Stay in Your Lane

Rely on recommendations from qualified treatment providers regarding level of care/treatment length and location





Ethics in Treatment Court

The Treatment Provider
Roles



Treatment Provider Role



- Advocate for the participants clinical needs
- Manages delivery of treatment services
 - Administers interventions have been demonstrated to improve outcomes
 - Provides clinical case management
 - Provides recurrence prevention and continuing care
 - Develops a continuing care plan with participants
 - Liaison with other treatment providers
- Attend staffing and court
- Provide updates on treatment progress
- Provide education on substance use disorders/treatment to team
- Adhere to professional Code of Ethics

Ethical Considerations of Decision Making



- **Autonomy** – freedom to choose one's own destiny
- **Obedience** – Observe and obey legal and ethical directives
- **Conscientious Refusal** – refuse to carry out directives that are illegal or unethical
- **Beneficence** – to help others, act in the benefit of
- **Gratitude** – pass along the good we receive to others
- **Competence** – possess the necessary skills and knowledge to treat, and remain current in models, theories, and techniques
- **Justice** - fair and equal treatment
- **Stewardship** – use the available resources judiciously
- **Honesty and candor**: to tell the truth (clients, colleagues, community)

Advocacy



- Addiction professionals shall be aware of society's prejudice and stigma towards people with SUD, and shall advocate for opportunities and choices for clients.
- Engage in the legislative process, educational institutions, and public forums to educate people about addictive disorders
- Ensure that all persons have access to the opportunities, resources, and services required to treat and manage their disorders.

NAADAC 2021

Who is the Client?



- Balance client-centered care and the expectations of the court
- Risk of therapeutic discord
- Potential ethical dilemmas

Providing Individualized Treatment



THE MOST EFFECTIVE PROGRAMS

- Retain sufficient flexibility to accommodate individual differences in each participant's response to treatment.

Respecting Confidentiality

What is the role of the treatment team member?

Are there confidentiality considerations necessary to preserve the relationship?



Confidentiality



- Confidentiality and anonymity are foundational to addiction treatment
- All documentation must be HIPAA and 42 CFR part 2 compliant
- All disclosures must be discussed with the client in an ongoing manner regarding how, when, and with whom information is being shared

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Confidentiality: 42 CFR Part 2 and HIPAA



42 CFR Part 2:

Title 42, Part 2 of the Code of Federal Regulations ensures a patient receiving substance use treatment does not face adverse consequences in criminal proceedings and civil proceedings such as those related to child custody, divorce, or employment.

HIPAA

Health Insurance Portability Accountability Act encourages electronic transmission of certain health information with its own privacy rule

Confidentiality – The Federal Law



CFR 42 Part 2

- 42 Code of Federal Regulations – Part 2 (revised)
- Addresses the stigma of seeking treatment for SUD
- Prohibition of redisclosure
- Requires notification of confidentiality/ consent release forms
- Applies specifically to AOD related information

HIPAA

- Health Insurance Portability and Accountability Act (1996)
- Designed to simplify and standardize the complexity of administrative information management
- Protect and secure patient information
- Applies to all health-related information

Sharing Information



- HIPAA and 42 C.F.R. Part 2 do not prohibit treatment professionals or criminal justice professionals from sharing information related to substance use and mental health treatment.
- These statutes control how and under what circumstances treatment professional (and other covered entities) may disclose such information
- Voluntary, informed, and competent waiver of patient's confidentiality and privacy rights; or
- Court order (in the absence of patient waiver)

Elements of Consent

Patient Name

The full name of the individual whose information will be disclosed.

Name or Description of Disclosing Entity

The specific SUD treatment program or provider releasing the information.

Name or Description of the Recipient(s)

Example: *"Treatment court team, judge, probation officer, defense attorney, and other personnel involved in legal supervision."*

Purpose of the Disclosure

Example: *"To comply with court-ordered monitoring, including updates on attendance, progress, and compliance with treatment."*

Description of the Information to be Disclosed

Clearly state what will be shared (e.g., attendance, treatment plans, drug testing results, progress/compliance).

Right to Revoke the Consent*

Language must explain that the patient may revoke consent at any time (orally or in writing), with a note that revocation may affect participation in court programs.

Statement on Voluntariness

Must state that treatment services will not be denied if consent is not given, unless required as a condition of a specific program (e.g., treatment court).

Expiration Date or Condition

Example: *"This consent will expire upon completion of treatment court supervision, or [insert date/event]."*

Signature and Date

Signed and dated by the patient (or legal guardian, if applicable).

Notice of Prohibition on Redisclosure

Must accompany the disclosure and state that the information is protected and cannot be further shared without proper authorization under 42 CFR Part 2.

Sharing Information



- In treatment courts, treatment professionals (and others who are subject to HIPPA and 42 C.F.R. Part 2 stipulations) **may** share specified information with other team members pursuant to a valid waiver (or court order).
- Scope of disclosure must be limited to the **minimum** information necessary to appraise participant progress in treatment and complying with the conditions of the program.

Disclosures to elements of the criminal justice system that have referred patients



- Disclosure to only those who have a need for information in connection with their duty to monitor
- Written consent from the patient
- Duration must consider the length of treatment, type of criminal proceedings, and the final disposition

Revocation of Consent (CJ)



- Revocable upon the passage of time specified ***OR***
- The occurrence of a specified ascertainable event
- The time or occurrence may be no later than the final disposition of the conditional release or other action in connection with which consent was given.

Confidentiality Staffing Recommendations

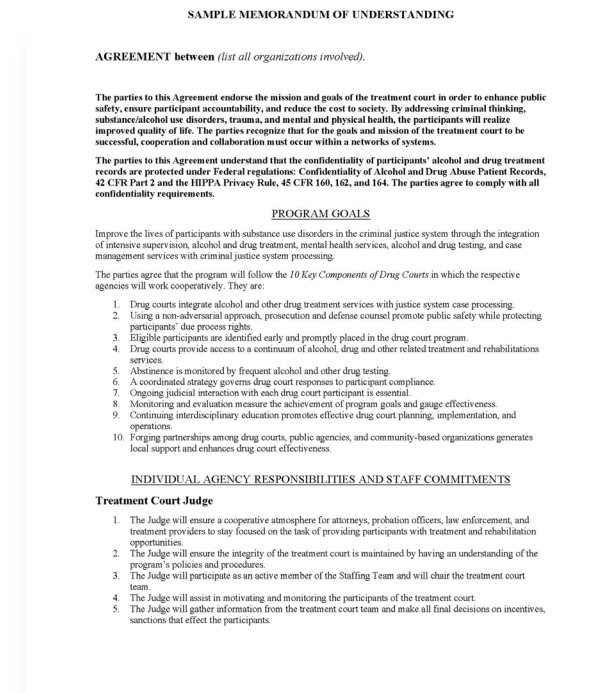


- Include a provision in the participant handbook that there is no right for a participant to attend staffing
- Control attendance at staffing to key team members
- Don't charge participants with new crimes based on information learned in staffing
- Confidentiality principles apply to all team members
- Create memorandum of understanding contracts with each agency on the team

Memorandum of Understanding



- Direct contracts can be made by the courts with community organizations providing formal services, such as residential and outpatient treatment services, job training, and life skills training
- These are written agreements with other agencies or organizations for services and coordination



Sharing Information



- Assessment results pertaining to a participant's clinical eligibility for treatment court and treatment
- Attendance at scheduled appointments/sessions
- Attainment of treatment plan goals
- Evidence of symptom resolution or exacerbation
- Evidence of treatment-related attitudinal changes/engagement
- Clinical stability, psychosocial stability, and early remission considerations

Clinical Toxicology Testing



Clinical testing is based on clinical and medical needs, not supervisory/surveillance



Clinical toxicology testing includes the reasons for testing, how toxicology test results will be used to inform treatment



Participants should be informed about the reasons/results and sharing regarding testing



The use of toxicology testing should be normalized as a therapeutic tool used to support an individual's recovery



If the treatment center is providing supervisory/surveillance testing, policies and practices should be in place that discerns the types of testing and how the results will be shared/used.



It is important for programs and providers to use non-stigmatizing and clinically appropriate terms; for example, “positive toxicology result” rather than “dirty urine”.

Basics of MAT

- No blanket refusals to permit MAT
- Current illegal use of drugs cannot serve as a basis to deny MAT
- Individualized inquiry required
- Must be available during incarceration



MEDICATION ASSISTED TREATMENT

Unified Judicial System of Pennsylvania paid \$100,000 where court policies categorically limited or prohibited the use of MAT and agreed to encourage all courts to adopt new policies to ensure individuals under supervision can take lawfully prescribed medications to treat OUD.

United States v. Unified Judicial System of Pennsylvania



Medications



- Medications for addiction treatment improve outcomes, and includes buprenorphine, methadone, and naltrexone (Vivitrol).
- Participants are prescribed psychotropic or substance use disorder medications based on medical necessity by a treating physician with related experience.

All Rise Board of Directors Position Statement



Treatment court professionals must:

- Learn about MAT
- Consult with experts on MAT options
- Eliminate blanket prohibitions of MAT
- Recognize that MAT decisions are based on medical evidence

Religious-Based Programming

Compelling a probationer to attend a program rooted in religious faith violates the First Amendment.

Inouye v. Kemna, 504 F.3d 705 (9th Cir. 2007)

However, a participant who voluntarily enters a faith-based program to fulfill a supervision requirement and then fails to comply cannot then complain that expecting compliance violates the First Amendment.

Richard v. Border (Oregon, 2008)

Religious-Based Programming

Refer



Require





Ethics for Attorneys

Familiarity with core concepts of treatment courts:

- Treatment

- Eligibility criteria and enrollment process

- Policies and procedures/expectations

- Incentives and sanctions

- Due process concerns

- Sentencing alternatives

- Best Practice Standards

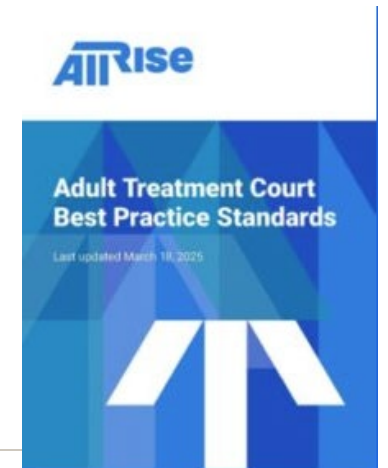
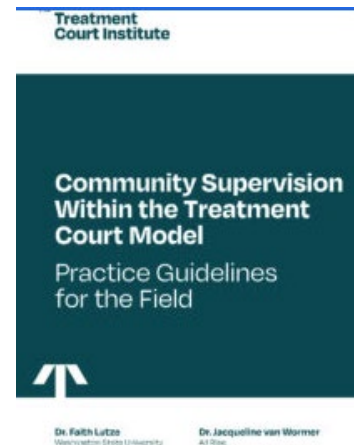
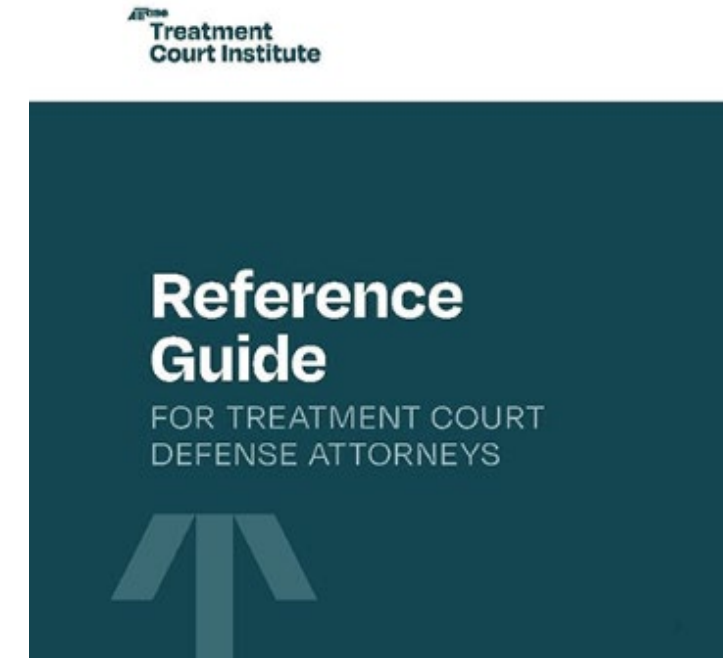


Defense Attorney

The advocacy role is not abrogated simply because of the unique treatment court dynamic

What are the client's interests?

Ongoing Education: The Key to Ethical Practice

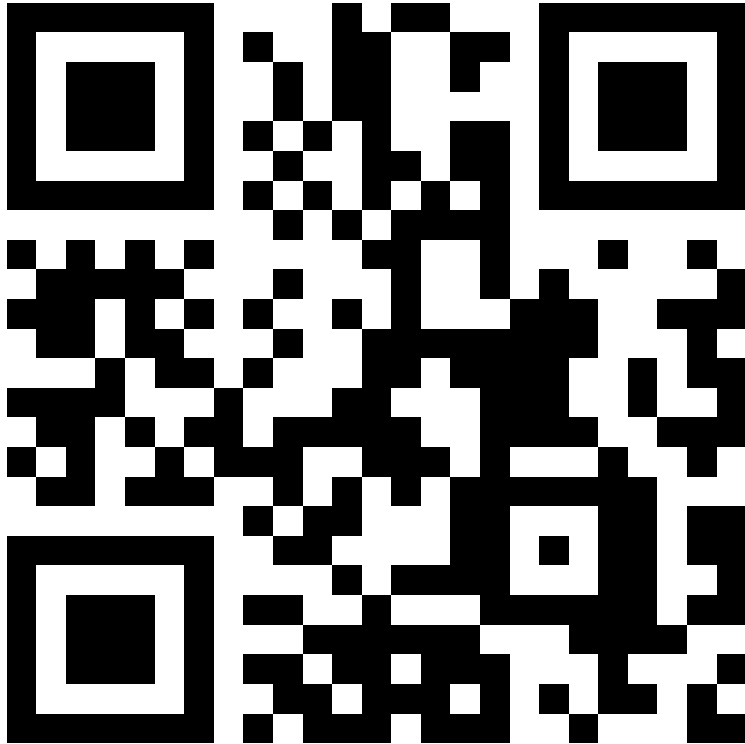


Navigating Ethical Challenges

- Respect Colleagues
- Educate First, before adversarial position
- Raise issue informally, and then formally, before there is a case in dispute
- Clarify the nature of the ethical conflict
- Take reasonable steps to resolve the conflict
- Always be prepared to step back to education
- Abiding vs. contributing to sub-standard care and practices

¹From Doug Marlowe MAT, Ethics and Law

Evaluations



1. On your compatible phone or tablet, open the built-in camera app.
2. Point the camera at the QR code.
3. Tap the banner that appears on your phone or tablet.
4. Follow the instructions on the screen to complete the evaluation.
5. After completion, you will be provided with a certificate that can be saved and printed.

•Survey Link: <https://cvent.me/K1gomQ>



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