

## **The PT Clinic: A Review of Ethical and Legal Concepts and Case Scenarios** (1 CE HOUR)

### **Course Abstract**

This course provides a practical review of common legal and ethical issues that pertain to the physical therapy (PT) workplace. It defines terms that affect PT practice; reviews concepts such as malpractice, whistleblowing, and mandatory reporting; and addresses the American Physical Therapy Association (APTA) Code of Ethics. It also presents several case scenarios, analyzing each via the Realm-Individual Process-Situation (RIPS) Model of Ethical Decision Making.

*NOTE: Links provided within the course material are for informational purposes only. No endorsement of processes or products is intended or implied.*

### **Target Audience & Prerequisites**

PT, PTA – no prerequisites

### **Learning Objectives**

By the end of this course, learners will:

Recall ethical and legal terms relevant to the practice of physical therapy

Recognize the rationale for, and key principles of, the American Physical Therapy Association (APTA) code of ethics

Identify aspects of the Realm-Individual Process-Situation (RIPS) Model of Ethical Decision Making

### **Timed Topic Outline**

I. Defining Physical Therapy (PT) Practice (5 minutes)

II. The American Physical Therapy Association (APTA) Code of Ethics (5 minutes)

III. Professional Negligence and Malpractice (5 minutes)

IV. Whistleblowing and Mandatory Reporting (5 minutes)

V. The Realm-Individual Process-Situation (RIPS) Model of Ethical Decision Making (35 minutes)

VI. Appendices, Additional Resources, References, and Exam (5 minutes)

### **Delivery Method**

Correspondence/internet self-study with interactivity, including a provider-graded final exam. *To earn continuing education credit for this course, you must achieve a passing score of 80% on the final exam.*

### **Cancellation**

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### **Course Author Bio and Disclosure**

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Dr. Cheatham is an expert consultant providing physical therapy expert testimony, chart review, and education for various organizations and government agencies. Dr. Cheatham is an expert for the Physical Therapy Board of California and an approved provider for California PT Laws and Ethics education. He currently serves on professional practice and ethics boards for various organizations.

As an educator and practitioner, Dr. Cheatham is able to provide a unique perspective and understanding of complex physical therapy legal cases. Dr. Cheatham has served as an expert for both plaintiff and defendant cases where he has provided his expert opinion. Dr. Cheatham primarily works as a physical therapy expert witness in the continental United States.

DISCLOSURE: Financial – Scott Cheatham received a stipend as the author of this course. Nonfinancial – No relevant nonfinancial relationship exists.

## **Introduction**

This course discusses common legal and ethical concepts that pertain to the clinical practice of physical therapy (PT), and reviews the ethical guidelines that inform that practice.

*While this course uses laws and regulations from California as examples to illustrate some of the ethical topics discussed, a full examination of PT laws and regulations is beyond its scope. The reader is encouraged to familiarize themselves with PT laws in the state in which they practice.*

## Section I: Defining PT Practice

This section discusses common principles of laws and ethics, presenting a general overview of foundational concepts. Together, state PT Boards and the American Physical Therapy Association (APTA) Code of Ethics provide a framework for PT clinical practice in the United States. First we'll look at state laws, which allow state Boards to define and enforce the practice of PT within each state. Then we'll consider professional ethics, which represent a moral standard of practice within the defined scope of the state's PT practice act.<sup>1</sup>

### State Laws and Regulations

Each state has its own PT practice act that defines the scope of PT practice in that state – for example, these acts require that PTs be licensed in each state to provide patient care, and set the standards by which that licensing occurs.<sup>2</sup> Most PT practice acts consist of two sections: **laws** and **regulations**. In general, laws set up a Board and define the practice of physical therapy in a specific state, and regulations (issued by the Board help define and clarify the processes and procedures by which the laws will be enacted and enforced.

Each state has an individual definition of laws and regulations. For example, in the state of California, these are defined as follows:<sup>3</sup>

***Laws** are created by statutes that originate from legislative bills originally introduced by either the Senate or the Assembly. For example, in 1953 the Physical Therapy Practice Act (Act) was created by Chapter 1823 because of AB 1001. The Physical Therapy Practice Act begins with §2600 in the Business and Professions Code (B&P Code) and governs the practice of physical therapy. The Act, statutes, laws and B&P Code could be considered synonymous.<sup>3</sup>*

***Regulations** are standards (see the Rulemaking Process below) adopted as rules by the Physical Therapy Board of California (PTBC) to implement, interpret, or make specific the law enforced or administered by the Physical Therapy Practice Act. Regulations must be approved by the Office of Administrative Law, and filed with the Secretary of State.<sup>3</sup>*

It's important to be familiar with understand your state's practice act – both laws and regulations – in order to stay within your scope while treating patients.

The APTA website provides a listing of the state PT Boards which is available at:<sup>2</sup>  
<http://www.apta.org/Licensure/StatePracticeActs>.

### Ethics and Morals

The term ethics may have a different meaning to each physical therapist and may be contextual to the clinician's practice, work environment, patient population, state of licensure, etc. For the purposes of our discussion, **ethics** can be defined as follows:<sup>1,2</sup>

*“The branch of philosophy that defines what is good for the individual and for society and establishes the nature of obligations, or duties, that people owe themselves and one*

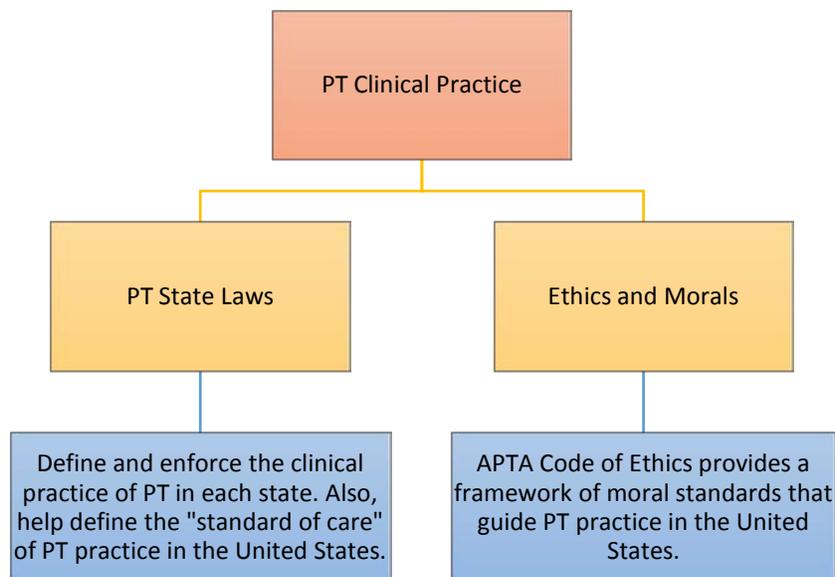
*another. In modern society, ethics define how individuals, professionals, and corporations choose to interact with one another.”*

A simpler definition is that “*ethics can be considered the moral standards by which people judge behavior.*”<sup>4,5</sup> However, the definition of what constitutes having “good” ethics today is often debated.

As defined above, “ethics” is based on moral standards or what we feel is the best behavior for a given situation. **Morals** are based on principles of right and wrong; a moral person conforms to standards of behavior and character based on those principles. Moral values can occur at many different levels such as: personal morality, group morality, and societal morality.<sup>1,2</sup> Thus, our moral beliefs will shape our ethical decision making.

When we analyze both definitions discussed above, we can see that morals define personal or professional character, while ethics represent a system in which those morals are applied. In other words, ethics points to standards or codes of behavior expected by the group to which the individual belongs. This could be national ethics, social ethics, company ethics, **professional ethics**, or even family ethics.<sup>5</sup> While a person’s moral code is usually unchanging, the ethics he or she practices can be other-dependent.

Whether it’s business or healthcare, each profession has a distinct system, and physical therapy is no exception. For PTs, professional ethical standards are defined by the American Physical Therapy Association (APTA) Code of Ethics.



## Section II: APTA Code of Ethics

Clinicians may ask, “What are the reasons for creating a code of ethics?” As mentioned in the prior section, professional ethics give the clinician a template or blueprint with which to practice. Ethical guidelines are designed to help the clinician make sound decisions and ultimately do what’s best for the patient. APTA has created such a framework for all practicing physical therapists called the Code of Ethics.<sup>3</sup>

The APTA Code of Ethics defines our practice on all levels from personal to organizational to societal.<sup>1</sup> The purposes of the Code of Ethics are to:<sup>3</sup>

- Define the ethical principles that form the foundation of physical therapist practice in patient/client management, consultation, education, research, and administration
- Provide standards of behavior and performance that form the basis of professional accountability to the public
- Provide guidance for physical therapists facing ethical challenges, regardless of their professional roles and responsibilities
- Educate physical therapists, students, other healthcare professionals, regulators, and the public regarding the core values, ethical principles, and standards that guide the professional conduct of the physical therapist
- Establish the standards by which APTA can determine if a physical therapist has engaged in unethical conduct

The Code of Ethics is based upon **five key areas of physical therapy practice**: patient/client management, consultation, education, research and administration. The Code of Ethics is also shaped by a set of **eight principles and seven core values** that include accountability, altruism, compassion/caring, excellence, integrity, professional duty and social responsibility.<sup>1</sup> These core values are the foundation of the Code of Ethics and ultimately shape our profession. The Code of Ethics defines the ethical obligations of all physical therapists as described by the APTA.

The most recent version of the principles and core values of the Code of Ethics took effect on July 1, 2010 and have not been updated since then. Below is a brief listing of these key principles and core values.<sup>12</sup>

Principle #1      Physical therapists shall respect the inherent dignity and rights of all individuals.  
(*Core Values: Compassion, Integrity*)

Principle #2:      Physical therapists shall be trustworthy and compassionate in addressing the rights and needs of patients/clients. (*Core Values: Altruism, Compassion, Professional Duty*)

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

*Values: Excellence, Integrity)*

- Principle #4: Physical therapists shall demonstrate integrity in their relationships with patients/clients, families, colleagues, students, research participants, other healthcare providers, employers, payers, and the public. *(Core Value: Integrity)*
- Principle #5 Physical therapists shall fulfill their legal and professional obligations. *(Core Values: Professional Duty, Accountability)*
- Principle #6 Physical therapists shall enhance their expertise through the lifelong acquisition and refinement of knowledge, skills, abilities, and professional behaviors. *(Core Value: Excellence)*
- Principle #7 Physical therapists shall promote organizational behaviors and business practices that benefit patients/clients and society. *(Core Values: Integrity, Accountability)*
- Principle #8 Physical therapists shall participate in efforts to meet the health needs of people locally, nationally, or globally. *(Core Values: Social Responsibility)*

**Appendix A** provides a detailed description of the Code of Ethics for the reader to review.

Of course, how the Code of Ethics is applied may vary with each clinician as they work in different clinical settings, with different patients, etc. Overall, however, the principles in the Code are broad enough that they have relevance to most situations. (Clinicians should remember that questions regarding scope of practice and state laws should be directed to the PT Board in the appropriate state.)

### **Section III: Professional Negligence and Malpractice**

Based, at least in part, on the professional perception that PTs have an ethical duty to their patients, laws describing the practice of physical therapy in the United States often refer to the term “standard of care.” In short, this can be described as the level and type of care that competent, skilled PTs provide. If care occurs below the standard and results in harm, then professional negligence or malpractice could have occurred.

All 50 states have specific laws pertaining to professional negligence and malpractice. In general, a plaintiff must establish all four elements of the tort (a civil wrong doing) of negligence for a successful medical malpractice claim. These elements are outlined below:<sup>4-6</sup>

1. *A duty was owed: a legal duty exists whenever a hospital or health care provider undertakes care or treatment of a patient.*
2. *A duty was breached: the provider failed to conform to the relevant standard care.*
3. *The breach caused an injury: the breach of duty was a proximate cause of the injury.*
4. *Damage: without damage (losses which may be pecuniary or emotional), there is no basis for a claim, regardless of whether the medical provider was negligent. Likewise, damage can occur without negligence, for example, when someone dies from a fatal disease.*

If professional negligence was determined the plaintiff may be able to seek damages, which can include both *compensatory* and *punitive* damages.

*Compensatory* damages are both economic and non-economic.<sup>7</sup> Economic damages include financial losses such as lost wages (sometimes called lost earning capacity), medical expenses, and life care expenses. These damages may be assessed for past and future losses. Non-economic damages are assessed for the injury itself: physical and psychological harm, such as loss of vision, loss of a limb or organ, the reduced enjoyment of life due to a disability or loss of a loved one, severe pain and emotional distress. *Punitive* damages are only awarded in the event of wanton and reckless conduct.<sup>4,5,7</sup>

Many states enacted statutory damages caps on personal injury cases during a tort reform movement in the 1980s.

## **Section IV: Whistleblowing and Mandatory Reporting**

As a practicing PT, you may witness situations that could lead to claims of professional negligence or malpractice, including unethical situations. You may also witness, or suspect, that a patient is experiencing abuse. These situations require the PT to act – but how?

### **Whistleblowing**

The term “whistleblower” is used to describe a person who exposes an activity that is deemed illegal, unethical, or incorrect. When an unethical or illegal situation occurs, a PT has an ethical obligation to act as a whistleblower, and must decide who to report the incident to. Each situation is very complex and often involves more than once person.

For example, an elderly woman with a diagnosis of decline in function was referred to rehabilitation to build strength and endurance, and for development of a home program. Jeremy, a PT, has been treating her for 2 months; he has also been receiving expensive gifts on a regular basis from the family of the elderly woman. Cheryl, his co-worker, has co-treated the patient for the last month and has noted in the chart that the patient has met all goals and is ready for discharge. Since then, the elderly women has been attending rehabilitation with Jeremy 3x per week.

One day, Cheryl notices that the patient is scheduled to see her when Jeremy is out. Cheryl inquires about the elderly patient’s status to Jeremy, who says that the patient and family are very nice and that he doesn’t have the heart to discharge the patient - he will find something to keep her here for another month at the family’s request. He asks Cheryl to just see the patient and refrain from writing a detailed SOAP (Subjective, Objective, Assessment, and Plan) note for the day.

Jeremy’s actions have made Cheryl very uncomfortable. She feels there are several issues: (1) receiving gifts, (2) excessive treatment, and (3) requesting that Cheryl possibly falsify a medical record. Cheryl decides to consult her PT supervisor regarding these issues: ideally, the supervisor will consult Jeremy and hopefully come to an ethical solution. If no solution is presented, she plans to report Jeremy’s actions to her state PT Board, which has an anonymous reporting policy in place.

Often people may not report such acts in fear of retaliation or prejudice from coworkers or superiors.<sup>8</sup> In response to these concerns, the United States Congress enacted the Whistleblower Protection Act of 1989 which provides protection for federal employees. Congress also enacted the Sabranes-Oxley Act of 2002 which protects non-federal employees when reporting such incidences.<sup>9,10</sup> Currently, 48 states have whistleblower laws<sup>11</sup> and many companies have their own reporting policies. The reader is encouraged to familiarize themselves with their state and organizational whistleblower laws.

### **Mandatory Reporting**

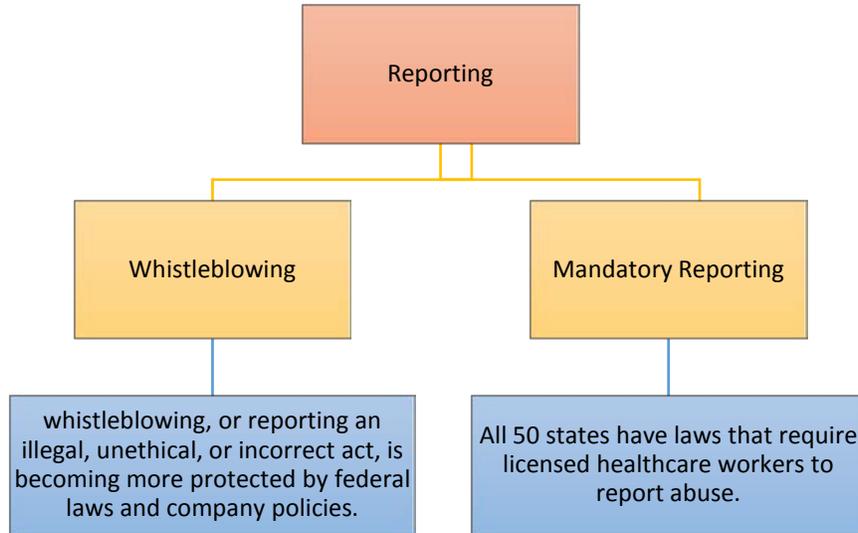
In the specific case of abuse, as state-licensed healthcare workers, PTs are considered mandatory reporters. Currently, all 50 states have specific guidelines on who are mandatory reports and the

procedures for reporting – often the state practice act for each profession contains specific language regarding such reporting.

The exact type of abuse that PTs are required to report may vary from state to state. For example, California has specific language requiring CA-licensed PTs to report any physical abuse, child abuse, or elderly abuse.<sup>3</sup> Furthermore, the PT Board of California requires specific reporting procedures:<sup>3</sup>

1. A report by telephone shall be made *immediately* or as soon as practically possible.
2. A written report shall be prepared and sent to a local law enforcement agency within two working days (children 36 hours) of receiving the information regarding the person.
3. A local law enforcement agency shall be notified and a written report shall be prepared and sent even if the person who suffered the wound, or other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.
4. The report shall include, but shall not be limited to, the following:
  - The name of the injured person, if known.
  - The injured person's whereabouts
  - The character and extent of the person's injuries
  - The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.
5. When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a team member to make the required telephonic and written reports. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

Each state will have its own unique language and requirements for reporting. The reader is encouraged to review their state laws and organizational procedures on mandatory reporting.



## Section V: The RIPS Model of Ethical Decision Making

When a physical therapist is confronted with an ethical situation it can be difficult to problem-solve in an organized manner and to develop a clear ethical decision. The complexity that comes with the physical therapist-patient relationship has increased in recent years due to the changes in how we deliver healthcare. These new demands require a more pro-active role with our patient which at times can be complex.

The Realm-Individual Process-Situation (RIPS) Model of Ethical Decision Making which has been a foundational model in physical therapy.<sup>4,12</sup> This section introduces the RIPS model to help the clinician develop an organized approach to ethical decision making. This four step model helps clinicians to organize their thoughts when confronted with an ethical situation.<sup>12</sup>

The model includes the following steps:<sup>12</sup>

### ***Step I: Recognize and define the ethical issue (realm, individual process and situation)***

The RIPS Model		
Realm	Individual Process	Ethical Situation
Individual	Moral Sensitivity	Problem or Issue
Institutional /Organizational	Moral Judgment	Temptation
Societal	Moral Motivation	Distress
	Moral Courage	Dilemma
		Silence

*Realm: Which area or realm does the ethical issue fall under?*

- *Individual realm:* concerned with the good of the patient/client and focuses on rights, duties, relationships and behaviors between individuals
- *Institutional/organizational realm:* concerned with the good of the organization and focuses on structures and systems that will facilitate their goals
- *Societal realm:* concerned with the common good

*Individual Process: Does the problem appear to be one of the following?*

- *Moral sensitivity:* Recognizing, interpreting, and framing ethical situations.
- *Moral judgment:* Deciding between right and wrong actions.
- *Moral motivation:* Prioritizing ethical values over financial gain or self interest.
- *Moral courage:* Implementing the chosen ethical action even though doing so causes adversity.

*Situation: How do you classify the ethical situation?*

- *Problem or issue:* a situation in which important moral values are being challenged
- *Temptation:* a situation in which a choice must be made between a right action and a wrong action, where the wrong action may benefit the decision-maker in some way
- *Silence:* key parties realize ethical values are being challenged, but do nothing
- *Distress:* there is a structural barrier to doing the right thing
  - Type A: There is a barrier keeping you from doing what you know is right
  - Type B: There is a barrier because something is wrong, but you are not sure what that something is.

- *Dilemma*
  - There are two (or more) correct courses of action that cannot both be followed.
  - You are doing something right, and also something wrong.
  - Most often involve ethical conduct (e.g. honoring autonomy vs. preventing harm).
  - May involve conflicting traits of character (e.g. honesty vs. compassion)

***Step II: Reflect upon the situation.***

- What are the relevant facts and contextual information?
- Who are the major stakeholders?
- What are the potential consequences, intended or unintended?
- What are the relevant laws, duties, and ethical principles?
- What professional guidance do we have?
- What do the “right vs. wrong” tests suggest you should do?
  - The legal test: Did anyone do anything illegal?
  - The “stench test”: Does the situation “smell” wrong?
  - Publicity (the “front page test”): Would any of the parties involved be embarrassed by the truth coming out?
  - Universality (the “mom test”): What would your mom do? Is this the right thing to do regardless of who’s involved?
  - The ethics test: Do the *Code of Ethics*, the *Guide to Professional Conduct*, or *Professionalism in Physical Therapy: Core Values*, say anything about this situation?

***Step III: Decide what to do***

- Rule-based: Follow only the principle you want everyone else to follow (deontological)
- Ends-based: Do whatever produces the greatest good for the greatest number (teleological)
- Care-based: Do unto others as you would have them do unto you (the “golden rule”)

***Step IV: Implement, evaluate, & reassess***

- Implement: moral courage (role-play, prepare, imagine)
- Evaluate and reassess
  - Did things turn out the way you expected? What did you do well? Not so well?
  - What were the most challenging aspects of this situation?
  - How did this situation compare with others you have encountered or read about?
  - How will this experience make you a better professional?

Below are three case scenarios that utilize the RIPS model.

*Case Scenario #1*

James is an experienced home care PT who enjoys the independence and variety of his work. One of his current patients is Mike, an active 72-year-old retiree and widower who recently had a left total knee replacement and spent a week at a rehabilitation center before returning home. Mike has a great attitude and is eager to "get back in the swing of things," as he puts it.

Payment for Mike's physical therapy is unaffected by the Medicare outpatient therapy cap for as long as he remains in home care. This makes James happy, because Mike, a hard worker and ideal patient, has little savings and only a small pension, and cannot afford to pay for physical therapy beyond what Medicare allows and his supplemental insurance will cover.

James's aim is to ensure Mike's safety in his home environment and his ability to manage on his own. The goal at discharge is for Mike to be self-sufficient, albeit while still experiencing residual pain, and capable of transporting himself to physical therapy. Based on Mike's limitations at the outset of home therapy, James estimates this progression will take 3 weeks, at three visits per week.

When James arrives for Mike's third appointment the first week, he notices that Mike's car is in the driveway rather than in the garage. After Mike answers the door he leads James to the kitchen, where Mike is finishing putting away groceries. James, aware that Mike has no family in the area, asks who did the driving and shopping. Mike responds proudly that he did.

James is surprised and concerned, not only from Mike's safety but also for his wallet. Mike's physical limitations remain significant in terms of range of motion, strength, and endurance, but in order for him to continue receiving home care physical therapy under Medicare, he needs to be homebound. James emphasizes this to Mike, who says he understands but adds that he's sure a certain amount of "wiggle room" is built into the rules. "What harm is there in my trying to do for myself?" Mike asks. "Shouldn't the government be encouraging that?"

When James happens to arrive a few minutes early the following Monday for Mike's next appointment, Mike's car is gone. About five minutes later, Mike drives up. He'd gone to the hardware store for plumbing supplies to fix a leaky sink, he calls from the driver's seat. James watches as Mike slowly exits the car and makes his way up the front steps, safely but with considerable difficulty. Upon questioning from James, Mike freely admits he'd been out driving several times over the weekend.

James feels conflicted. He firmly believes that Mike needs more physical therapy, based on his obvious exhaustion and objective measures of his progress that suggest solo errand running is neither safe nor prudent. In taking these trips, however, Mike has shown functional independence that defies the definition of homebound. As he follows Mike's slow, labored steps toward into the house, James wrestles with whether to make this visit Mike's discharge from home care physical therapy.

*Step I: Recognize and define the ethical issue*

- Realm: Individual; this is between James and Mike. But there also is a societal element because of Medicare reimbursement.
- Individual process: Moral sensitivity on James's part.
- Implications for action: If James exercises moral courage in this case, Mike will stop receiving home care physical therapy that can benefit him.
- Type of ethical situation: A dilemma. Mike is exercising his autonomy, but James is concerned for Mike's safety. James is exhibiting nonmalficence in wanting to keep Mike on program. James also is concerned about veracity: he believes in being truthful and doesn't want to lie about homebound status.
- Barriers: The one barrier to James taking action is his concern for Mike's safety if home health physical therapy is discontinued.

*Step II: Reflect upon the situation*

- Major stakeholders: James and Mike.
- Consequences of action or inaction: If James takes action to discharge Mike, Mike will lose additional physical therapy that he probably needs. But inaction means that a patient who is not by definition homebound will continue to receive home care physical therapy.
- Laws broken? Medicare laws are very specific regarding what constitutes home care status, as James is aware. He skirts them at his own peril.
- Professional guidance: Principle 7 of the Code of Ethics states. "A physical therapist shall seek only such remuneration as is deserved and reasonable for physical therapy services." Also, the professionalism core value of integrity applies here.
- Right versus wrong tests: Illegal? Yes. Situation feels wrong? Yes. Discomfort if information becomes public? Yes. Your parents likely to take action in similar circumstances? Yes. Violations of APTA's professional codes and documents? Yes.

### *Step III: Decide what to do*

While James must consider discharge, he also must do all he can to see that Mike will maintain access to the outpatient services he needs in order to ensure his safety.

### *Step IV: Implement, evaluate, and reassess*

It's unclear that any change in institutional policy or culture is warranted, but that possibility should be fully explored.

### *Summing Up*

As autonomous practitioners, we constantly must balance the need to provide ethical and comprehensive care with the demands of the workplace. Many conflicts relate to the challenges of reimbursement. I've received quite a bit of reader feedback on this series, and many of the comments resolve around the constant tension between doing what is right for the patient and what is best for the provider. Two consistent themes in the comments I've received are the pressure applied to PTs by others and the fact that PTs must provide patients with optimal care within guidelines.

The feedback drove home that practice must drive reimbursement, and that PTs cannot permit reimbursement to drive practice. It is our responsibility to ensure that the proper sequence is followed.

### *Case Scenario #2*

Stephan has owned a private practice for 14 years. Generally, he has worked alone, although he has hired staff for varying periods over the years. He has been divorced for 4 years, his intense devotion to the clinic having played a role in the split. Several months ago, he began treating Lucy, a single woman roughly his age who was recovering from neck and back injuries sustained in an auto accident. Stephan liked her from the start, and found that he enjoyed "talking shop" with her, as she was a massage therapist and his primary interest is manual physical therapy.

One early evening about 3 months into her treatment, Lucy was Stephan's last patient of the day, and Stephan asked her if she'd care to continue their discussion over dinner at a nearby

restaurant. She agreed. Dinner led to Stephan inviting Lucy to his condo, and Lucy ended up spending the night.

About a week afterward, at Stephan's suggestion, Lucy – who remained under Stephan's care but by then had regained considerable mobility – began seeing massage clients at Stephan's clinic. She now has been doing so for about a month. Many of her clients are current patients of Stephan, referred to her by him. Others are long-time clients of Lucy's who she now is seeing in Stephan's office. Stephan bills his patients for Lucy's services and pays her a per-visit rate, while she bills clients who were not referred to her by Stephan. Lucy remains a patient of Stephan's as well, although her physical therapy is down to one visit per week.

Last night, Stephan and Lucy, now firmly a couple, were socializing in Stephan's condo building with a married couple they'd recently befriended. Jim, the husband, commented on how compatible Stephan and Lucy seem to be, whereupon Lucy noted that she and Stephan not only spend much of their leisure time together, but also share many hours each week at Stephan's clinic as PT and patient, and as "co-workers," as well. Stephan then explained the office situation to Jim and his wife, Amy commenting, "It's working out really well."

The married couple responded with surprise. After a slightly awkward silence, Jim told Stephan and Lucy that the arrangement struck him as "a little weird." Amy nodded her agreement, but, not wanting to offend Stephan and Lucy, added, "I'm sure it's all above-board." She added with a laugh, "I'm not sure our marriage could survive that much togetherness!"

Stephan and Lucy laughed, but did not prolong the line of conversation. Stephan changed subjects to a movie the couple recently had seen.

*Step I: Recognize and define the ethical issue*

- Realm: Into which realm or realms does this situation fall: individual, organizational/institutional, or societal?
- What does the situation require of Stephan? Which individual process is most appropriate: moral sensitivity, moral judgment, moral motivation, or moral courage? Are there implications for action on the parts of anyone besides Stephan and Lucy?
- What type of ethical situation is this: a problem, dilemma, distress, or temptation?
- Are there barriers to Stephan taking action?

*Step II: Reflect upon the situation*

- What do you know about the legal obligations Stephan may face? How can you best find out about them?
- Who are the major stakeholders? In addition to Stephan and Lucy, who or what else may be affected by this situation?
- What are the potential consequences of action or inaction on Stephan's part?
- Might action or inaction break any laws?
- What ethical principle or principles may be involved? Do any of the following resources provide professional guidance: the APTA Code of Ethics, the APTA Guide for Professional Conduct, and/or Professionalism in Physical Therapy: Core Values?

For example, do you see a relationship between this case and any principles of the Code of Ethics?

- Finally, consider how this scenario stacks up against the tests posed by Rushworth Kidder in *How Good People Make Tough Choices*: legal, stench, front page, mom, and professional ethical violation. In other words: Is something illegal going on? Does the situation feel wrong? Would you feel uncomfortable, were you Stephan, if the details of the situation were to become public? What would your mother/parents do if faced with similar circumstances? Can you detect any ethical violations within the APTA resources listed previously?

### *Step III: Decide what to do*

If the scenario fails any of the tests described in the previous step, this step is superfluous. In that case, action must be taken; the question becomes what kind of action.

If, however, you believe the scenario passes each of Kidder's tests,<sup>15</sup> it's time to look at the three possible approaches Kidder presents for determining the right thing to do, and also to look at whether you foresee any barriers to implementing a response:<sup>15</sup>

- Rule-based: Follow only the principle you want everyone else to follow.
- Ends-based: Do whatever produces the greatest good for the greatest number of people.
- Care-based: Do unto others as you would have them do unto you. (The "Golden Rule.")

### *Step IV: Implement, evaluate, and reassess*

Having determined in your own mind the right thing to do and the best way to implement the decision, reflect on the course of action chosen and think about whether a change in the clinic's organizational policy or culture might prevent this scenario from recurring.

### Case Scenario #3

Jenna has been working at Pondview Medical Center for 6 years. A respected PT known for her wound care expertise, she's been a clinical instructor (CI) for the past 4 years and recently completed the CI credentialing course. She supervises at least three students a year as they rotate through their clinical experiences. Jenna enjoys the interactions – particularly introducing students to the clinical challenges of wound care.

This is the next-to-last clinical rotation for Brendon, a third-year DPT student at the local university who'd made a career change from the corporate world and thus is a little older than the students who generally rotate through Pondview. Brendon is working with another PT, Mary, for the first part of his affiliation and will move on to Jenna's supervision midway through the 12-week rotation. One day 3 weeks into Brendon's affiliation, he stays late to finish some paperwork and ends up leaving the building at the same time as Jenna, who'd also worked late. They get into a long conversation while standing in the parking lot. Brendon's very interested in wound care and asks Jenna a lot of questions about what he'll be seeing and doing while working with her in a few weeks. They also exchange a little small talk, during which Jenna mentions that her birthday's coming up the next week.

With the conversation winding down after about 20 minutes, Brendon says he wonders if Jenna would let him buy her a birthday drink at a bar that's within walking distance of the clinic. She responds that she appreciates the offer but that it strikes her as inappropriate, given that she'll be his supervisor in just a few weeks. Brendon responds that, having worked in a corporate environment, he's sensitive to issues of perception and propriety, but he adds that he sees this situation as innocuous. "It's just one birthday drink," he says. "And anyway, you can think of it as 'a penny for your thoughts,' because I want to pick your brain about some cases I've been seeing while working with Mary."

This sounds reasonable to Jenna. Would having a single drink with Brendon while engaged in professional dialogue be so wrong? Brendon awaits her answer.

*Step I: Recognize and define the ethical issue*

- Realm: Into which realm or realms does this situation fall: individual, organizational/institutional, or societal?
- What does the situation require of Jenna? Of Brendon? Which individual process is most appropriate: moral sensitivity, moral judgment, moral motivation, or moral courage? Are there implications for action on the parts of anyone besides Jenna and Brendon?
- What type of ethical situation is this: a problem, dilemma, distress, or temptation?
- Are there barriers to Jenna taking action?

*Step II: Reflect upon the situation*

- What do you know about the legal obligations Jenna may face? How can you best find out about them?
- Who are the major stakeholders? In addition to Jenna and Brendon, who or what else may be affected by this situation?
- What are the potential consequences of action or inaction on Jenna's part?
- Might action or inaction break any laws?
- What ethical principle or principles may be involved? Do any of the following resources provide professional guidance: the APTA Code of Ethics, the APTA Guide for Professional Conduct, and/or Professionalism in Physical Therapy: Core Values? For example, do you see a relationship between this case and any principles of the Code of Ethics?
- Finally, consider how this scenario stacks up against the tests posed by Rushworth Kidder in *How Good People Make Tough Choices*: legal, stench, front page, mom, and professional ethical violation. In other words: Is something illegal going on? Does the situation feel wrong? Would you feel uncomfortable, were you Jenna, were the details of the situation to become public? What would your mother/parents do if faced with similar circumstances? Can you detect any ethical violations within the APTA resources listed previously?

*Step III: Decide what to do*

If the scenario fails any of the tests described in the previous step, this step is superfluous. In that case, action must be taken; the question becomes what kind of action.

If, however, you believe the scenario passes each of Kidder's tests<sup>15</sup>, it's time to look at the three possible approaches Kidder presents for determining the right thing to do, and also to look at whether you foresee any barriers to implementing a response:<sup>15</sup>

- Rule-based: Follow only the principle you want everyone else to follow.
- Ends-based: Do whatever produces the greatest good for the greatest number of people.
- Care-based: Do unto others as you would have them do unto you. (The "Golden Rule.")

*Step IV: Implement, evaluate, and reassess*

Having determined in your own mind the right thing to do and the best way to implement the decision, reflect on the course of action chosen and think about whether a change in the clinic's organizational policy or culture might prevent this scenario from recurring.

*These case scenarios were adapted from the Ethics in Practice Column in PT-Magazine of Physical Therapy.<sup>13,14</sup> This can be accessed online at <http://www.apta.org/Ethics/Tools/>.<sup>12</sup> APTA member login-required.*

The above case scenarios were presented in an open-ended format to promote questions and concerns versus offering a decision or providing recommendation. The true outcomes of such situations would be contextual and influenced by state laws, regulations, etc.

## **Conclusion**

This course provided a discussion on common legal and ethical issues pertaining to the PT clinic: defining PT practice; the APTA Code of Ethics; malpractice, whistleblowing, and mandatory reporting; and the RIPS Model with related case scenarios.

The topics discussed are only some of the potential legal and ethical issues that can occur in today's work environment. The reader is encouraged to further study these topics to have a comprehensive understanding of laws and good ethical decision making.

## **Appendix A: APTA Code of Ethics Principles**

### *American Physical Therapy Association Ethics Principles*

Available at <http://www.apta.org>

Publish Date July 1<sup>st</sup>, 2010<sup>1</sup>

<b>Principle #1: Physical therapists shall respect the inherent dignity and rights of all individuals.</b>	
1A.	Physical therapists shall act in a respectful manner toward each person regardless of age, gender, race, nationality, religion, ethnicity, social or economic status, sexual orientation, health condition, or disability.
1B.	All therapists shall recognize their personal biases and shall not discriminate against others in physical therapist practice, consultation, education, research, and administration.
<i>(Core Values: Compassion, Integrity)</i>	

<b>Principle #2: Physical therapists shall be trustworthy and compassionate in addressing the rights and needs of patients/clients.</b>	
2A.	Physical therapists shall adhere to the core values of the profession and shall act in the best interests of patients/clients over the interests of the physical therapist.
2B.	Physical therapists shall provide physical therapy services with compassionate and caring behaviors that incorporate the individual and cultural differences of patients/clients.
2C.	Physical therapists shall provide the information necessary to allow patients or their surrogates to make informed decisions about physical therapy care or participation in clinical research.
2D.	Physical therapists shall collaborate with patients/clients to empower them in decisions about their health care.
2E.	Physical therapists shall protect confidential patient/client information and may disclose confidential information to appropriate authorities only when allowed or as required by law.
<i>(Core Values: Altruism, Compassion, Professional Duty)</i>	

<b>Principle #3: Physical therapists shall be accountable for making sound professional judgments.</b>	
3A.	Physical therapists shall demonstrate independent and objective professional judgment in the patient's/client's best interest in all practice settings.
3B.	Physical therapists shall demonstrate professional judgment informed by professional standards, evidence (including current literature and established best practice), practitioner experience, and patient/client values.

3C.	Physical therapists shall make judgments within their scope of practice and level of expertise and shall communicate with, collaborate with, or refer to peers or other health care professionals when necessary.
3D.	Physical therapists shall not engage in conflicts of interest that interfere with professional judgment.
3E.	Physical therapists shall provide appropriate direction of and communication with physical therapist assistants and support personnel.
<i>(Core Values: Excellence, Integrity)</i>	

<b>Principle #4: Physical therapists shall demonstrate integrity in their relationships with patients/clients, families, colleagues, students, research participants, other healthcare providers, employers, payers, and the public.</b>	
4A.	Physical therapists shall provide truthful, accurate, and relevant information and shall not make misleading representations.
4B.	Physical therapists shall not exploit persons over whom they have supervisory, evaluative or other authority (eg, patients/clients, students, supervisees, research participants, or employees).
4C.	Physical therapists shall discourage misconduct by healthcare professionals and report illegal or unethical acts to the relevant authority, when appropriate.
4D.	Physical therapists shall report suspected cases of abuse involving children or vulnerable adults to the appropriate authority, subject to law.
4E.	Physical therapists shall not engage in any sexual relationship with any of their patients/clients, supervisees, or students.
4F.	Physical therapists shall not harass anyone verbally, physically, emotionally, or sexually.
<i>(Core Value: Integrity)</i>	

<b>Principle #5: Physical therapists shall fulfill their legal and professional obligations.</b>	
5A.	Physical therapists shall comply with applicable local, state, and federal laws and regulations.
5B.	Physical therapists shall have primary responsibility for supervision of physical therapist assistants and support personnel.
5C.	Physical therapists involved in research shall abide by accepted standards governing protection of research participants.

5D.	Physical therapists shall encourage colleagues with physical, psychological, or substance related impairments that may adversely impact their professional responsibilities to seek assistance or counsel.
5E.	Physical therapists who have knowledge that a colleague is unable to perform their professional responsibilities with reasonable skill and safety shall report this information to the appropriate authority.
5F.	Physical therapists shall provide notice and information about alternatives for obtaining care in the event the physical therapist terminates the provider relationship while the patient/client continues to need physical therapy services.
<i>(Core Values: Professional Duty, Accountability)</i>	

<b>Principle #6: Physical therapists shall enhance their expertise through the lifelong acquisition and refinement of knowledge, skills, abilities, and professional behaviors.</b>	
6A.	Physical therapists shall achieve and maintain professional competence.
6B.	Physical therapists shall take responsibility for their professional development based on critical self-assessment and reflection on changes in physical therapist practice, education, healthcare delivery, and technology.
6C.	Physical therapists shall evaluate the strength of evidence and applicability of content presented during professional development activities before integrating the content or techniques into practice.
6D.	Physical therapists shall cultivate practice environments that support professional development, life-long learning, and excellence.
<i>(Core Value: Excellence)</i>	

<b>Principle #7: Physical therapists shall promote organizational behaviors and business practices that benefit patients/clients and society.</b>	
7A.	Physical therapists shall promote practice environments that support autonomous and accountable professional judgments.
7B.	Physical therapists shall seek remuneration as is deserved and reasonable for physical therapist services.
7C.	All therapists shall not accept gifts or other considerations that influence or give an appearance of influencing their professional judgment.
7D.	Physical therapists shall fully disclose any financial interest they have in products or services that they recommend to patients/clients.
7E.	Physical therapists shall be aware of charges and shall ensure that documentation and coding for physical therapy services accurately reflect the nature and extent of the services provided.
7F.	Physical therapists shall refrain from employment arrangements, or other arrangements, that prevent physical therapists from fulfilling professional obligations to patients/clients.
<i>(Core Values: Integrity, Accountability)</i>	

<b>Principle #8: Physical therapists shall participate in efforts to meet the health needs of people locally, nationally, or globally.</b>	
8A.	Physical therapists shall provide <i>pro bono</i> physical therapy services or support organizations that meet the health needs of people who are economically disadvantaged, uninsured, and underinsured.
8B.	Physical therapists shall advocate to reduce health disparities and health care inequities, improve access to health care services, and address the health, wellness, and preventive health care needs of people.
8C.	Physical therapists shall be responsible stewards of health care resources and shall avoid over-utilization or under-utilization of physical therapy services.
8D.	Physical therapists shall educate members of the public about the benefits of physical therapy and the unique role of the physical therapist.
<i>(Core Values: Social Responsibility)</i>	

Proviso: The Code of Ethics as substituted will take effect July 1, 2010, to allow for education of APTA members and non-members.

## **Additional Resources**

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14. NR K. Something to talk about. *PT-Magazine of Physical Therapy.* 2007;15(10).
15. Kidder RM. *How Good People Make Tough Choices Rev Ed: Resolving the Dilemmas of Ethical Living.* HarperCollins; 2009.

**The PT Clinic: A Review of Ethical and Legal Concepts and Case Scenarios**  
(1 CE HOUR)

**FINAL EXAM**

**1. Each state has its own physical therapy (PT) practice act that defines the scope of PT practice in that state. Most PT practice acts consist of two sections: \_\_\_\_\_.**

- a. Ethics and morals
- b. Ethics and regulations
- c. Laws and morals
- d. Laws and regulations

**2. Morals define personal or professional character, while \_\_\_\_\_ represent a system in which those morals are applied.**

- a. Beliefs
- b. Contracts
- c. Ethics
- d. Scruples

**3. Which of the following is NOT one of the purposes of the American Physical Therapy Association (APTA)'s Code of Ethics?**

- a. Establish the standards by which the American Physical Therapy Association can determine if a physical therapist has engaged in unethical conduct.
- b. Interpret state laws related to the practice of physical therapy, and develop regulations to help define the practice of physical therapy within those state laws
- c. Provide guidance for physical therapists facing ethical challenges, regardless of their professional roles and responsibilities
- d. Provide standards of behavior and performance that form the basis of professional accountability to the public

**4. The American Physical Therapy Association (APTA)'s Code of Ethics is based upon five key areas of physical therapy practice. It is also shaped by a set of eight principles and \_\_\_\_\_ core values.**

- a. 7
- b. 9
- c. 12
- d. 15

**5. In the American Physical Therapy Association (APTA)'s Code of Ethics, "Physical therapists shall fulfill their legal and professional obligations (Core Values: Professional Duty, Accountability)" is \_\_\_\_\_.**

- a. Principle #3
- b. Principle #5
- c. Principle #7
- d. Principle #8

**6. In short, " \_\_\_\_\_ " can be described as the level and type of care that competent, skilled PTs provide.**

- a. Malpractice
- b. Professional negligence
- c. Standard of care
- d. Tort

**7. In the specific case of \_\_\_\_\_, as state-licensed healthcare workers, physical therapists are considered mandatory reporters.**

- a. Abuse
- b. Embezzlement
- c. Insurance fraud
- d. Overcharging

**8. With regards to the Realm-Individual Process-Situation (RIPS) Model of Ethical Decision Making, the \_\_\_\_\_ realm is concerned with the common good.**

- a. Individual
- b. Institutional
- c. International
- d. Societal

**9. With regards to the Realm-Individual Process-Situation (RIPS) Model of Ethical Decision Making, " \_\_\_\_\_ " is the ethical situation in which key parties realize ethical values are being challenged, but do nothing.**

- a. Dilemma
- b. Distress
- c. Silence
- d. Temptation

**10. "Reflect upon the situation," is \_\_\_\_\_ of the Realm-Individual Process-Situation (RIPS) Model of Ethical Decision Making.**

- a. Step I
- b. Step II
- c. Step III
- d. Step IV