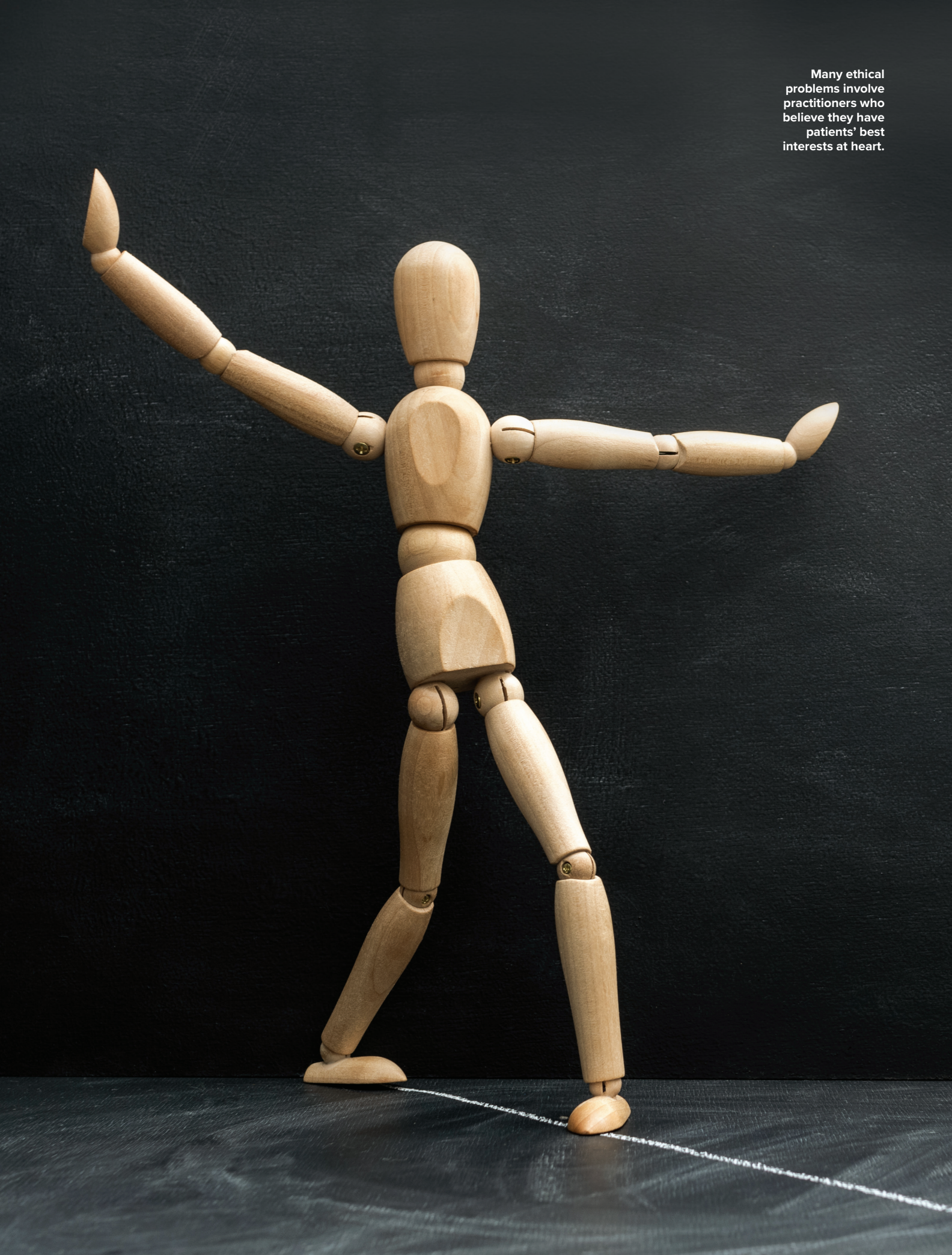

Many ethical problems involve practitioners who believe they have patients' best interests at heart.

CE

CONTINUING EDUCATION COMMON ETHICAL MISSTEPS AND HOW TO AVOID THEM

BY AMY NOVOTNEY

When it comes to issues of professional competence, APA's Ethics Code requires psychologists to prepare before practicing in a new area, typically through advanced coursework, training or at least supervision. That's a lesson licensed child and family psychologist Nancy McGarrah, PhD, says she wishes she'd learned earlier in her career—before she found herself on the witness stand in a therapy patient's child abuse case, with no training in forensic psychology and little understanding of how to testify in court or stay within her role as treating psychologist. She was providing professional opinions and advice beyond her role and level, and the oversight could have landed her in front of a psychology licensing board for working outside her scope of practice, she says. So, she took steps to make sure it never happened again by getting training in court-related issues.

Most situations that land clinicians in front of licensing boards—or escalate to lawsuits and even a loss of license—start off gradually and often involve practitioners who believe they have their patients' best interests at heart, says Lindsay Childress-Beatty, JD, PhD, interim director of APA's Ethics Office.

"That's one of the biggest risk factors for a lot of psychologists—they often just want to be helpful," she says.

The *Monitor* spoke with ethics experts about three of the most common ethical risks for psychology practitioners—and steps practitioners can take to avoid these pitfalls.

1 WORKING OUTSIDE YOUR SCOPE OF PRACTICE

The requirement in Section 2.01 (Boundaries of Competence) of APA's Ethics Code seems straightforward, yet it's one of the most common concerns practitioners bring to APA's Ethics Office, says Childress-Beatty. "Practitioners may inadvertently get pulled into helping with something that's close to what they do but it isn't exactly what they do, and they often don't realize they've moved into an area that requires more specialized expertise or training until they are already in the midst of it," she says.

One of the most common areas of risk—as McGarrah found early in her career—is getting pulled into court cases without forensic training, including when working with children whose parents are divorced or divorcing. In such cases, the psychologist may be hired as the child's therapist, then gets drawn into advocating for one parent or the other in a custody dispute.

McGarrah's advice for practitioners working in such situations is to have the parent bring in a copy of their divorce decree before the first session of the child's therapy. This document specifies the child's physical and legal custody arrangements. That ensures that if a parent who has joint custody tries to arrange a therapy appointment for the child without the other parent's consent, the psychologist can stop the therapy before he or she is involved in a custody dispute.

McGarrah also advises against giving opinions or letters of recommendation to the court on any issue related to child custody arrangements unless a child custody evaluation has been completed.

"Parental fitness can be discussed after evaluating only one parent, but parenting schedules and decision-making recommendations should only be made after a family evaluation, which requires practitioners to receive additional training," she says. She also recommends that psychologists who receive a subpoena or court order in a custody case seek guidance on how to respond from their malpractice carrier,

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1. Define three common ethical mistakes practitioners make.

2. Discuss the events that can lead to practitioners falling prey to these ethical pitfalls.

3. Describe strategies that can help practitioners avoid these issues in their practice.

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state psychological association or APA's Ethics Office before they head to court.

"Therapists can forget that there are two sides to the story and that they are being colored by their relationship with one person," Childress-Beatty says. "We hear often about therapists making custody recommendations when they have never even met the other parent."

Another example of a practitioner providing services outside of their scope of practice is offering medication advice to patients, such as suggesting a dosage change or offering an opinion on a new medication to try without appropriate training in psychopharmacology, says clinical psychologist Nancy Gajee, PhD, director of outpatient clinical services at Judge Baker Children's Center in Boston. She notes that often a mental health provider may not understand all the considerations that went into the medication decision, and without getting more information from the prescriber, their advice can result in confusion for the patient and potentially dangerous nonadherence with the prescribed medication regimen.

Rebecca Schwartz-Mette, PhD, the current chair of APA's Ethics Committee, says many practitioners push the boundaries of their competence because they're faced with patients who desperately need help and the practitioner thinks they can handle it. "The onus is really on psychologists to try to be as accurate as possible in self-assessment," says Schwartz-Mette, a professor of clinical psychology at the University of Maine. "We really need to be reaching out for consultation and training and support when it comes to areas [in which] we don't have expertise."

That advice is particularly true when it comes to practitioners working with patients who may be suffering from an eating disorder, Gajee says. While many clinicians are qualified to provide treatment for anxiety, depression and other co-occurring mental health issues that often accompany an eating disorder, she notes that eating disorders themselves can be very complex to treat and psychologists without specific training can face the risk of malpractice if they provide advice on nutrition, exercise or supplement use to these patients without consulting the patient's physician, nutritionist and other multidisciplinary team members.

2 NOT DOCUMENTING SUICIDALITY OR VIOLENCE

In the United States, suicide now ranks as the second leading cause of death for 10- to 34-year-olds. Screening for suicidality is an essential step both at the start of and throughout therapy, yet because suicide is a relatively infrequent occurrence in the practices of most psychologists, many practitioners aren't using the most up-to-date, reliable and accurate measures for suicidality, Schwartz-Mette says.

Further, it can be difficult to recall training you've had on a subject years ago in graduate school and respond appropriately to a crisis when it's not something you often deal with in your practice, Gajee says. "Even if you have good training in the appropriate steps to take in these situations, until you've been in the room with someone who is actively suicidal, you probably don't have a sense for the range of skills this can require," she says.

It's important to stay up-to-date on the most current science on suicide assessment and the risk factors for suicidality, and to document *everything,* Schwartz-Mette says. "The liability to psychologists in this arena comes not so much from what the psychologist did or didn't do but from how it was documented," she says. "A good rule of thumb is that if it's not written down, it didn't happen, so you could face big problems if you're not documenting that you're assessing patients for suicidality and violence." Gajee agrees, noting that if a worst-case scenario happens—a patient dies by suicide or violently harms another person—there's a good chance the psychologist's records will be requested by the state mental or public health department or by a lawyer for the patient's or victim's family.

"Practitioners need to pay attention and probe further when patients are talking to them about how they're feeling, or if they mention wanting revenge for something," says Anne Huben-Kearney, RN, assistant vice president of risk management for AWAC Services Company, a member company of Allied World (the risk management arm of the American Professional Agency Inc., APA's professional insurance carrier). During any suicide and/or violence assessment, it's also important to ask about the patient's access to firearms and how they are stored, and then to

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Psychologists can help prevent privacy breaches by educating patients about the risks of communicating by email and text.

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document these conversations so that practitioners have this information on record if they are asked to provide it to a court of law or to law enforcement agencies at a later time, she says.

When it comes to preparing for a crisis situation, consult with colleagues who have expertise in working with volatile patients and educate yourself on when the duty to warn applies and what the state statute requires in terms of next steps, Huben-Kearney says. Some states, for example, indicate that the duty to warn only arises when there is an identifiable victim and the intended violence is imminent. Other states, however, have broader parameters, including a more general threat not limited to a specific person—for example, when a patient intends to commit serious violence in a public place or when a patient says he or she is going to harm someone but won't tell the practitioner who. The National Conference of State Legislatures provides guidance on the duty-to-warn statute in each state.

3 FAILING TO PROTECT PATIENT PRIVACY

Today, technology and social media are part of most psychologists' personal and professional lives. But they can also create endless possibilities for risk for psychology practitioners, Schwartz-Mette says.

"It's hard to learn from experience and carry that forward in this arena when the technology platforms that we use and the required security measures are always changing," she says. "That's not really part of our skill set." One of the biggest things practitioners need to keep in mind is the importance of protecting patient privacy and confidentiality when it comes to using technology. The most common area where psychologists can run into problems with this is when a patient initiates a communication with their therapist through text or email.

"It's one thing to text about rescheduling an appointment, but patients often think it's OK to use text or email to communicate with their therapist about a new problem that has arisen or how their treatment is going," Huben-Kearney says. While a therapist may have an encrypted email program, the patient likely does not, and the information they share could be vulnerable to hackers.

To help protect yourself and your patients, Gajee recommends including information about email and text correspondence in your informed consent process, to ensure patients know up front that this is not a secure way to communicate medical information. If you use telepsychology in your practice, Schwartz-Mette says it is critical to get trained in how to use videoconferencing technologies safely and securely, to protect your patient. She also suggests becoming familiar with the APA Services *Guidelines for the Practice of Telepsychology*.

"I'm positive that there are practitioners who have no idea that they need to do x, y and z to safeguard their practice when conducting therapy online," Schwartz-Mette says. The *Monitor*'s May 2017 CE Corner, "How to Make the Most of Telepsychology and Steer Clear of Pitfalls," is also a good resource

● **The APA Ethics Office** assists members by guiding them to relevant ethical standards of the Ethics Code that help address their ethical dilemmas. The Ethics Office may also help the member distinguish between those aspects of the dilemma that involve a legal question, require clinical consideration or relate to risk management. However, the Ethics Office does not provide legal, clinical or risk management advice. Please consult with your colleagues, licensing board, attorney or malpractice carrier for additional assistance as needed.

KEY POINTS

1. **Psychology practitioners can avoid practicing outside their boundaries of competence by consulting with colleagues and the APA Ethics Office and by pursuing additional training.**
2. **Understanding current standards and evidence-based practices for assessing suicide and violence risk and knowing duty-to-warn laws helps practitioners avoid ethical concerns.**
3. **To prevent privacy breaches, psychologists should educate patients on risks and adhere to strict protocols when using email for treatment concerns or connecting with patients on social media.**

to consult on this topic.

Huben-Kearney also encourages practitioners to educate themselves on the appropriate use of social media, given the increasing number of calls her office and the APA Ethics Office receive related to how practitioners can and should respond to negative reviews on social media.

"Clients and families have a right to post anything they want about you, no matter how absurd or ludicrous or false it might be—but practitioners cannot respond due to patient confidentiality concerns," she says. She recommends that practitioners speak with an attorney or their malpractice agency and come up with a benign response, along the lines of "We take criticism very seriously, and if there is any concern, please contact me at this number." Practitioners should never acknowledge online that the individual who wrote the review is a client, says Huben-Kearney. After they've obtained legal advice, Gajee encourages psychologists to discuss the issue with the patient privately, offline, to address their concerns and inform ongoing treatment. Sometimes these types of incidents are related to something that has come up in therapy and are therefore clinically relevant to the therapeutic process. Such feedback also has the potential to identify ways to improve the practice in the future.

FURTHER READING

APA's Ethical Principles of Psychologists and Code of Conduct
www.apa.org/ethics/code/ethics-code-2017.pdf

Ethical Conflicts in Psychology
(5th ed.)
Drogin, E.Y.
APA, 2019

Practitioners should also create policies that educate patients by explaining the confidentiality and privacy risks related to telepsychology and social media use, such as not using email for treatment-related concerns and not connecting with the practitioner on social media, she says. One resource for this is the informed consent and social media policy compiled by San Francisco-based psychologist Keely Kolmes, PsyD.

"So many clients want to communicate by email and text these days, so it's critical for practitioners to let people know that, even if a practitioner has an encrypted system, most likely the client does not," Gajee says. ■