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Article 62

E-mail Communication With Clients: Some Ethical Concerns

Paper based in part on a presentation from the 2010 American Mental Health Counselors Association Annual Conference, July 15-17, 2010 Boston, MA.

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In an era where there is a need for fast, inexpensive communication, e-mail communication has thrived. While many assume that e-mail emerged in the latter part of the 20th century, in reality, the first e-mail was sent in 1971 (Finn, 2006). From its beginning in the business community almost 40 years ago, e-mail communication has rapidly expanded. Shaw and Shaw (2006) reported that in 2001, 57% of the respondents to their survey (U.S. survey) indicated that they communicate by e-mail. In 2008, Parks reported that the percentage of e-mail users in the U.S. had increased to 72.5%. According to the Radicati Group (2009), an estimated 247 billion e-mails are sent each day. By 2013, this figure is projected to be 507 billion. The Radicati Group predicted that the number of worldwide e-mail users will increase from 1.4 billion in 2009 to almost 1.9 billion in 2013. This figure indicates that about 20% of the world's population uses e-mail.

Challenges

Despite its prevalent use, e-mail communication has its challenges. Bradley and Hendricks (2009) described some of the challenges created by e-mail use. In 2004, a Boston attorney was upset by an e-mail sent by a client. Without adequately considering the consequences, the attorney forwarded the e-mail communication to a colleague who in turn sent it to another colleague. Essentially, the contents were shared with several members of the Boston legal community, and the e-mail was discussed on ABC's Nightline News. In 2005, CNN ran a newscast in which they clearly stated that e-mail is "fodder for litigation." Zambroski (2006) described a legal action discussed on CNN in which a Massachusetts class-action suit was filed involving the dangers of a drug combination. In that case, the court allowed an e-mail written by an executive to be entered into the case. Specifically, the executive wrote, "Do I have to look forward to spending my waning years writing checks to fat women worried about a single lung problem?" Zambroski also described a settlement of \$2.2M by Chevron in which an interoffice e-mail was sent. That e-mail gave 25 reasons why beer is better than women. The purpose of this article is not to suggest that e-mail communication be avoided; instead, the authors are suggesting that caution is needed before the counselor communicates with clients by e-mail.

E-mail for Professional Communication

Although e-mail communication began in the business world as a simple office means of fast communication, it has expanded far beyond the business community. For example, e-mails have been sent between lawyer and client (Hricik & Scott, 2007; Walther, 2007), physician and patient (Brooks & Menacheme, 2006; Kivits, 2006), nurse and patient (Caffery, Stewart & Smith, 2007; Edwards, 2008), counselor and client (Alemi et al., 2007; Caffery & Smith, 2006; Haberstroh, Duffey, Evans, Gee, & Trepal, 2007), social worker and client (Finn, 2006; Parker, 2008), and psychologist and client (Fisher & Fried, 2008). Since e-mail communication is expanding at an astounding rate, professionals generally, and counselors specifically, must be cognizant of its challenges. To illustrate this point, the case of Ann will be discussed.

Case of Ann

Ann is a counselor in private practice who gives her e-mail address to her clients. Ann states that e-mail communication is a fast, inexpensive method for communicating with her clients frequently between counseling appointments. While Ann admits that she has no definite time for checking e-mails, she tries to check e-mails each day, and if this is not possible, she checks e-mails every other day.

Recently, Ann's mother became very ill. Upon hearing her mother was ill, Ann rushed to the airport to fly to her mother's bedside at a hospital 1000 miles away. Prior to leaving town, Ann sent individual e-mails to each of her clients telling them that because of her mother's illness she was cancelling all of her appointments next week. In the e-mail, she told her clients that she would send an e-mail as soon as she knew when she would return to her office. At that time, she would reschedule appointments. In the

meantime, if they experienced problems, the clients could communicate with her by e-mail. She further said that since she would be spending most of her time with her mother at the hospital, she wasn't sure as to how often she would check her e-mails.

When Ann arrived at the hospital, her mother was very ill and was often unaware of Ann's presence. Ann felt she should spend every available minute with her mother. Accordingly, she seldom had time to check her e-mails. One day when she did check her e-mails, Ann was surprised to read an e-mail from her client, Dave. In that e-mail, Dave said that his illness had gotten worse, and he wasn't sure that the fight was worth his effort. Since Ann interpreted the e-mail as Dave may be suicidal, she quickly sent an e-mail to Dave who replied that he just had a bad day when he sent the e-mail. Ann was relieved to receive an e-mail from Dave. She quickly scheduled an appointment with Dave.

Important Questions

As Ann considered the case of Dave, she had the following questions:

1. What is my liability?
2. If Dave had committed suicide would I have been held liable?
3. Since my mother was very ill, do I have a responsibility to check my e-mails from my clients?
4. Since I didn't feel that I could leave my mother, doesn't my mother's illness excuse my not taking my computer to the hospital?

Important Answers

With regard to Question 1: Ann has liability. In referring to Codes of Ethics, the American Counseling Association Code of Ethics (ACA; 2005) and The American Mental Health Counselors Association Code of Ethics (AMHCA; 2010) are clear that the welfare of the client is paramount. Since Ann had left town without providing for the welfare of her clients (e.g., referral to other counselor, information on where to go for an emergency), she would have been liable if client problems had occurred. Additionally, the ACA Code of Ethics explicitly forbids counselors to abandon their clients.

Section A.11.a of the ACA Code of Ethics states:

Abandonment Prohibited: Counselors do not abandon or neglect clients in counseling. Counselors assist in making appropriate arrangements for the continuation of treatment, when necessary, during interruptions such as vacations, illness, and following termination.

With regard to Question 2: If Dave had committed suicide, Ann would likely have been held liable even though she was 1000 miles away.

With regard to Question 3: Although Ann was often at the hospital visiting with her mother, she was still expected to check her e-mails in a timely manner. According to Bradley and Hendricks (2009), the term in a "timely manner" usually means daily although not necessarily weekends. The important point is that Ann, in her written informed consent and in her e-mail signature area, must clearly state when she will check her e-mails. For example, Ann might say, "E-mails are checked at 6 pm each weekday (Monday-Friday). E-mails will not be checked on weekends (Saturday and Sunday). Any

e-mail sent after 6 pm on Friday will not be checked until after 6 pm the following Monday. If you have an emergency, please call 911 or go to the nearest emergency room.”

With regard to Question 4: Since Ann has given her e-mail to her clients, and informed them that she will communicate with them by e-mails, then Ann has the obligation to read and return e-mails although her mother is in the hospital. If Ann cannot communicate with her clients when she is away, then she must inform each client. If Ann is unavailable to her clients she should, ideally, have another qualified therapist available to her clients in case of emergency during her absence. Further, she must inform clients of the therapist who is taking her calls as well as what they should do in the case of an emergency. Finally, Ann should document in her case that she has informed her clients of the measures that she has taken to insure emergency coverage during her absence.

Important Recommendations

Although the authors are not telling counselors to communicate with clients by e-mail, the authors are recommending that if the counselor agrees to communicate with clients by e-mail, the following are necessary.

1. The counselor must consider the advantages and disadvantages of e-mail communication and decide if he or she will communicate with clients by e-mail. Further, the counselor must decide if the client is emotionally stable to communicate by e-mail.
2. If the counselor decides to communicate with a client by e-mail, the counselor must:
 - consult pertinent codes of ethics (e.g., ACA, AMHCA) and any legal mandates of the state in which they are practicing.
 - contact their professional association to be sure they are current on the association's code of ethics thereby insuring they understand ethical issues generally and ethical issues of e-mail communication, specifically.
 - contact the insurance company providing their professional liability insurance to be sure e-mail communication with clients is a covered entity.
3. Other recommendations for counselors communicating with clients by e-mail include that the counselor:
 - Revise their Informed Consent form to include their policies and procedures regarding e-mail communication with clients. The Informed Consent Form must state when e-mails will be read and if a fee is charged for receiving and sending e-mails.
 - Expand the e-mail signature to include such issues as confidentiality, security, privacy, intended user, and unauthorized access. Zur (2008) states that the signature statement should also say, “this e-mail and any attachments are for the use of the addressee and may also contain privileged or confidential information” (p. 3).
 - Acknowledge to the client that confidentiality cannot be guaranteed.
 - State the security precautions (e.g., encryption, firewall software) that have been taken to provide confidentiality. When encryption is not available, counselors must inform clients of this limitation and limit their

electronic communications that are not client specific (American Counseling Association, 2005).

- Counselors must inform clients if and for how long they store electronic communications (American Counseling Association, 2005). Counselors must consult ethics codes, legal mandates, and funding sources to obtain information regarding how long these records should be stored. When counselors are unsure as to how long to store records and two or more sources provide guidelines, the more stringent guidelines should be followed. For example, if state law mandates that records must be retained for five years and third party payer mandates that records should be kept seven years, the records should be kept seven years.
- Recognize that the e-mail communication with the client will be considered as part of the client's official counseling record.
- Print out all e-mails sent to and received from the client and place these in the client's counseling file.
- Never send out e-mails to clients on a listserv. Since the listserv contains the names of all clients, these e-mails sent on a listserv would break confidentiality because the clients would have the names of other clients that are being counseled.
- Recognize that whether the counselor engages in face-to-face counseling or e-mail communication with clients, the counseling relationship is of paramount importance.

Discussion and Summary

Throughout this manuscript, the authors have been careful to state that they are not telling counselors to communicate with clients by e-mail. Instead, the authors are saying that after carefully considering the advantages and disadvantages, the counselor must decide if he/she will or will not communicate with clients by e-mail.

In instances where counselors have decided to communicate with clients by e-mail, the counselor must place the welfare of the client as paramount. In our opinion, e-mail communication with clients should never replace individual counseling. Further, e-mail communication may not be appropriate for all clients.

Although the decision to communicate with clients is a decision made by counselor and client, the authors have used a case study (Ann) by which to help counselors be more aware of problems that can occur. Counselors are encouraged to consider the problems that could occur before they engage in e-mail communication with clients. As with all types of counseling, counselors communicating with clients by e-mail are encouraged to consult with counselors experienced in e-mail communication with clients.

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Note: This paper is part of the annual VISTAS project sponsored by the American Counseling Association. Find more information on the project at: http://counselingoutfitters.com/vistas/VISTAS_Home.htm