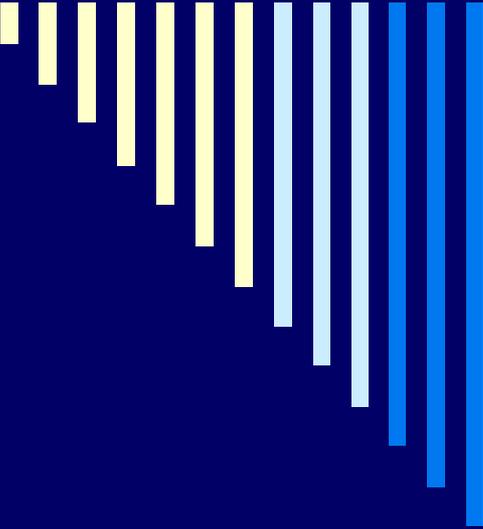


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# Ethics and Confidentiality

**DeeAnn L. Peterson, MS, LADC,  
NCC, LAMFT**

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# Confidentiality

- Information regarding a person's substance abuse history is federally protected to encourage those needing treatment to seek help without fear of repercussions



# Confidentiality/Privacy

Several rules apply to participants in Drug treatment courts.

42 CFR Part 2 – The alcohol and substance abuse treatment confidentiality rule.

HIPAA – New federal rules covering all health related information.

# 42 CFR Part 2

The regulations governing  
“confidentiality of alcohol and drug  
abuse patient records



# 42 U.S. Code 290dd

## 42 CFR Part 2

- First issued 1975, revised 1987
- Designed to help deal with the stigma of addiction.
- Requires notification of confidentiality, consent forms, prohibition of re-disclosure
- “I’m sorry I cannot acknowledge whether someone is or isn’t in our treatment program”.

# 42 CFR Part 2

- Imposes restrictions upon the disclosure and use of patient records that are maintained in connection with the performance of any federally assisted alcohol and drug abuse program

## There are fines associated with infractions of this regulation:

- 1. If the client requests that a substance abuse staff participates in case management while in treatment or during the after-care phase, an *Authorization to Release Information* will be completed and kept on file.

# Rules contd.

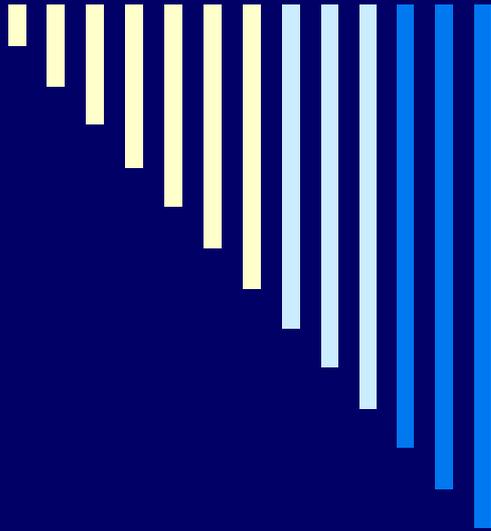
- 2. No information regarding a client will be released without a signed Authorization to Release Information.
- 3. When information is forwarded to another agency, it must contain the following prohibition:

# DISCLOSURE

- *This notice accompanies a disclosure of information concerning a patient in alcohol/drug abuse treatment, made to you with the consent of such patient. This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR, Part 2).*

# DISCLOSURE

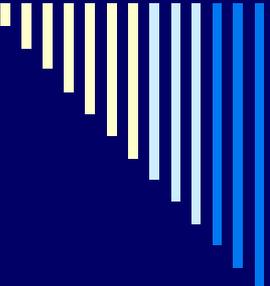
- The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by 42 CFR, Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of this information to criminally investigate or prosecute a client or patient.



# RELEASING INFORMATION

Rules

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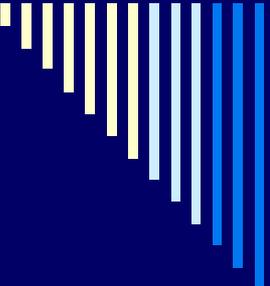


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# Rule # 1

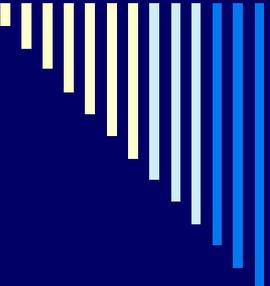
- Don't release any client information to anyone
  - Three sets of exceptions:
    - 1. *Client consent/authorization*
    - 2. *When rule does not apply:*
      - Communication internal to agency, crimes on the program premises or against agency personnel, Qualified Service Organization Agreement, and reporting suspected child abuse or neglect
-

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# When rule does not apply contd.

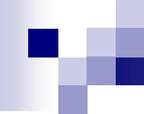
- Medical Emergencies
  - Research
  - Audit and Evaluation
-



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## EXCEPTIONS CONTD:

- 3. Court Order Authorizing disclosure and use:
  - Subpoena is not the same as a court order
-



# Elements of Informed Consent

- Name of client
- Name of organization to make the disclosure
- Name of organization to whom information is being disclosed
- Kind and amount of information to be given
- Purpose of the disclosure



# Elements of Informed Consent

- Statement that consent may be revoked at any time, except as already relied upon and/or criminal justice system consent
- Date or condition when consent will terminate
- Client signature and date
- Or signature of minor's parent or other authorized to sign in lieu of client when necessary
- Signature of staff assisting client with release



# HIPAA

- Health Insurance Portability and Accountability Act of 1996
- Designed to ensure maintenance of health insurance coverage when you change jobs.
- Administrative simplification – Healthcare processes becoming very complex – look to standardize information – make it easier.
- Protect confidentiality and security of patient information

# Is your Drug Court a HIPAA Covered Entity?

- [www.cms.hhs.gov/HIPAAGenInfo/](http://www.cms.hhs.gov/HIPAAGenInfo/).

# HIPPA

- PHI – Protected Health information
- TPO – Treatment, Payment, Operations
- NPP – Notice of Privacy Practices

# Protected Health Information

## 2 Components

- Identifies the client
- Health Information
- Any information that is oral, written, electronic, created or received by health care provider, health plan, public health authority, employer, insurer, or others
- Relating to past, present or future physical or mental health status, health care, and payment for such services

# ISSUES

- Information received from another covered program cannot be re-released
- Information we release cannot be re-released by others; each disclosure must be accompanied by a statement that clearly says this (exact language is in the rule)

# Notice of Privacy Practices (NPP)

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- ❑ PATIENT RIGHTS
  - ❑ Right to request restriction of uses and disclosures of information
  - ❑ Right to access PHI (protected health information) in order to inspect and/or obtain copies
  - ❑ Right to amend PHI
  - ❑ Right to accounting of disclosures over past 6 year period
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# ISSUES

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- Arrest warrant or subpoena are insufficient to obtain client information – requires also court order or consent
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# Responding to Subpoena

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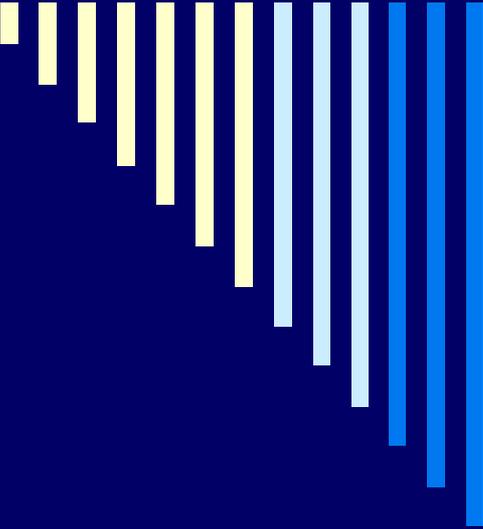
- ❑ Is a person a client?
  - ❑ Is there a consent?
  - ❑ Then decide how to manage the situation
  - ❑ THE BURDEN IS ON THE ORGANIZATION NOT TO DISCLOSE CLIENT INFORMATION
-

# ISSUES

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- ❑ **DOCUMENTATION OF RELEASES**
  - ❑ When entity releases information to:
  - ❑ EMT in medical emergency
  - ❑ Police in case of crime on premises
  - ❑ Child abuse/neglect report
  - ❑ Prevent harm
  - ❑ Court Order
  - ❑ ALL MUST BE DOCUMENTED IN CHART!
-

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4. When we release any information in response to any request for information

**we should document what was released.**

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# HIPPA ISSUES

- Information received under promise of confidentiality is not subject to client right to access of records
- Confidentiality of client PHI assured through secure transmissions (email secure or fax).
- Program must determine the identity and authority of person requesting PHI before it is released

# Common Security Violations that threaten confidentiality

- Inappropriate management of use ID, password, computer equipment
- Ex:
  - Leaving terminal turned on or unattended
  - Sharing use ID and/or password
  - Requesting others to use their password
  - Posting of a password (ex: post-it note)

# Common Security Violations

- Revealing of client information – unauthorized disclosure of PHI
- Misuse of internet, email, fax, mail systems to send PHI to individuals without a right to know
- Obtaining PHI about clients for other than work related, need to know reasons

# PRACTICAL SAFEGUARDS

- Do not leave papers containing PHI lying around where others can see them
- At end of workday – clear desk or other exposed areas of PHI and place in secure location (file, cabinet, desk drawer).
- Do not talk about patient PHI in public areas
- If you take work home don't leave it in a place accessible to people not agency employees, keep locked in a briefcase or in car/trunk.



# HIPAA vs. 42 CFR Part 2

- The laws cover a lot of the same material.
- Some points of difference – more specific or more recent rule usually applies.
- For the CD Treatment providers, in most cases the rules of 42 CFR Part 2 are more stringent
- In several cases HIPAA wins.

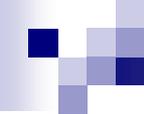


Do These Laws Apply to Drug  
Court Practitioners?

How Do We Know They Apply?



Is the Drug Court Program a  
Treatment Program for the  
Purposes of the Confidentiality  
Regulations and Why?



# General Rule of Disclosure

- “Treatment Programs may only release information or records that will directly or indirectly identify a drug court participant as a substance abuser or treatment patient:
  - With a knowing and written consent from the participant, AND
  - Other exceptions (explained earlier)



# Consents

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- ❑ A proper consent can authorize all parties involved in the drug court to share information necessary to monitor treatment progress and compliance.
  - ❑ To be effective the consent form should be signed at the earliest possible time.
  - ❑ Judge, coordinator, probation, etc., should get consent and fax it to treatment before 1<sup>st</sup> appointment.
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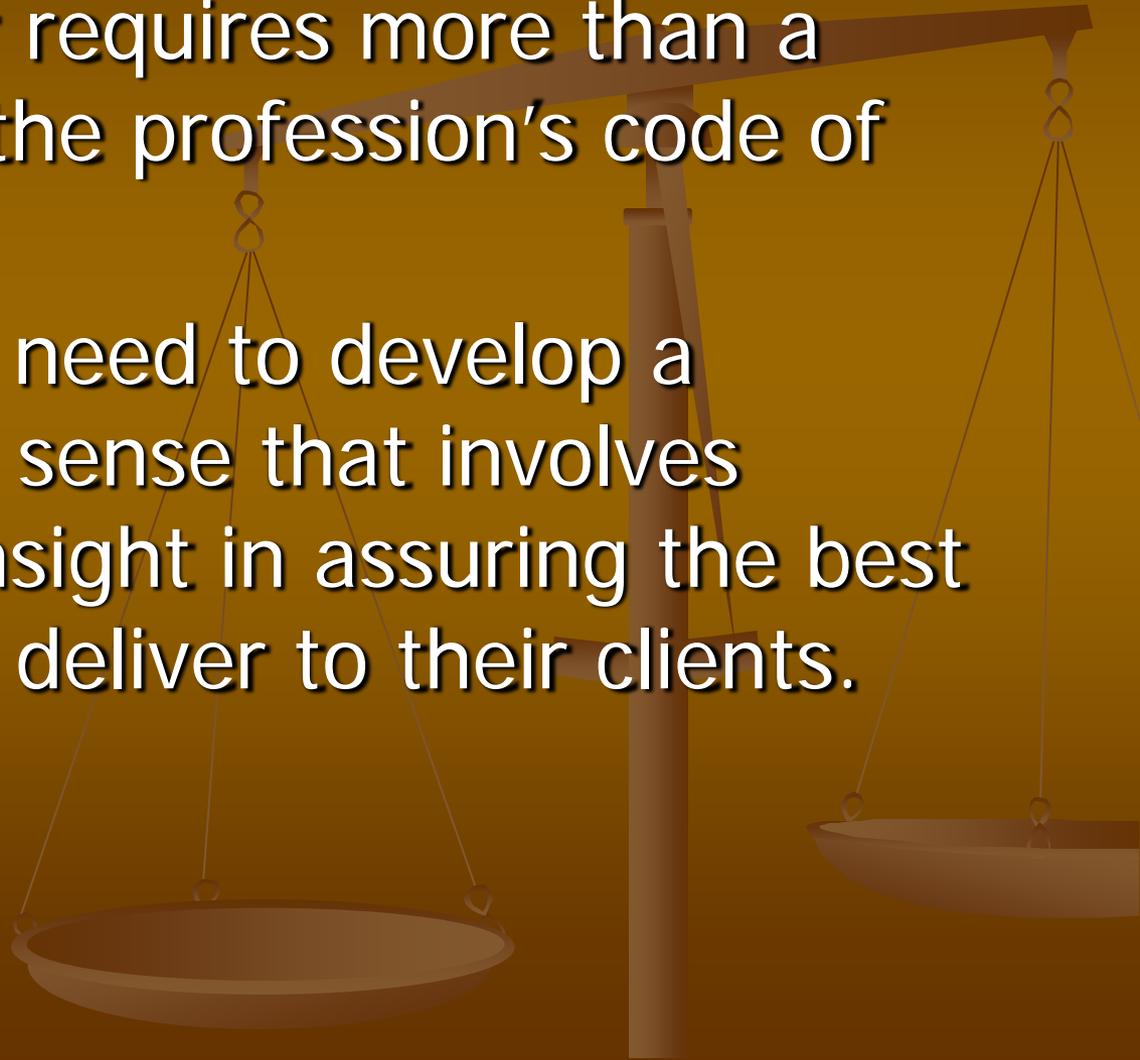
# Requiring Consents

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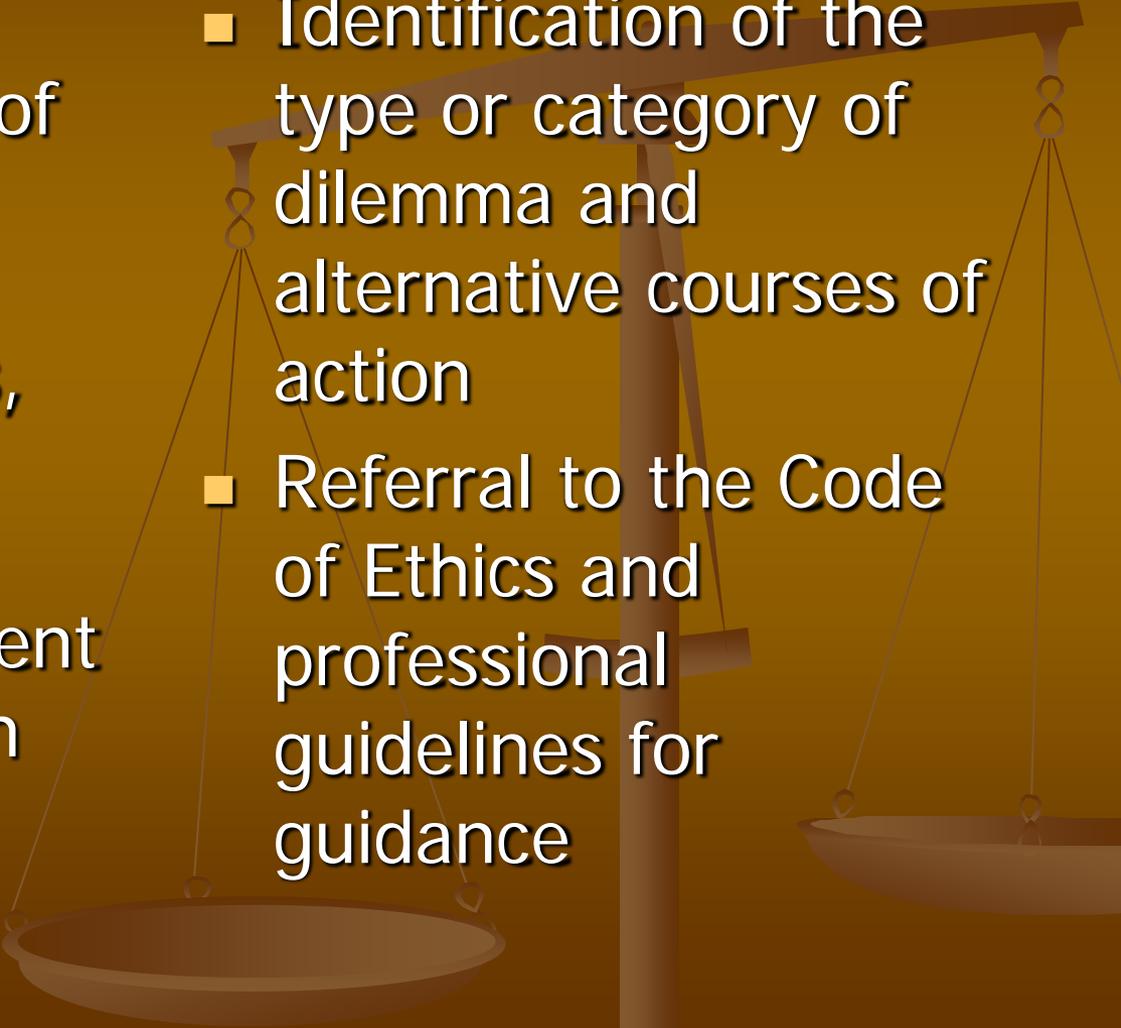
- ❑ HIPAA prohibits a program from conditioning treatment on a patient signing a consent, but
  - ❑ The judge, probation/parole, child welfare can condition participation in the drug court program on the defendant signing the consent form.
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# ETHICS

- Ethical behavior requires more than a familiarity with the profession's code of ethics.
- Counselors also need to develop a personal ethical sense that involves reflection and insight in assuring the best possible service deliver to their clients.

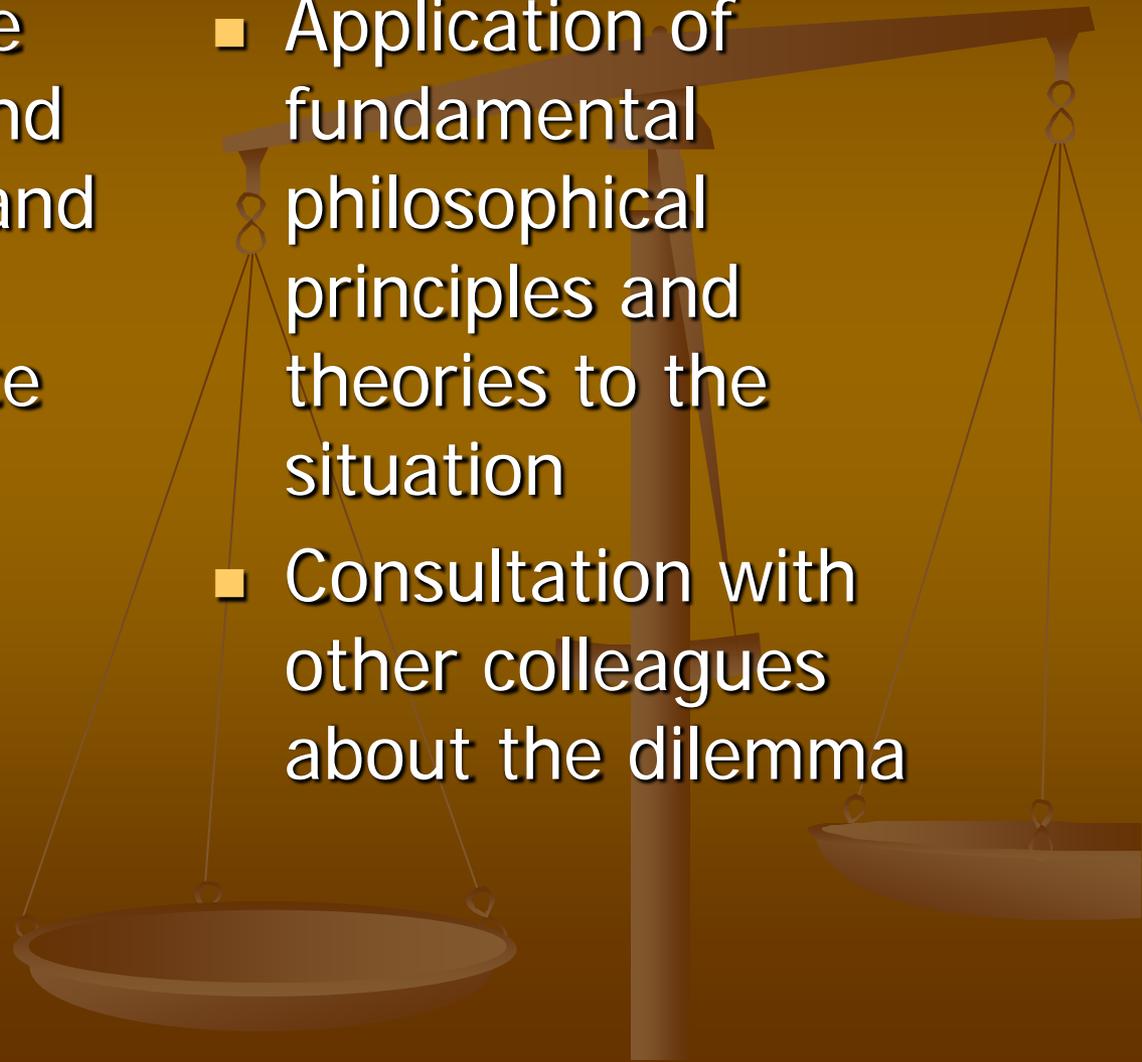


# Process Model for Ethical Decision Making

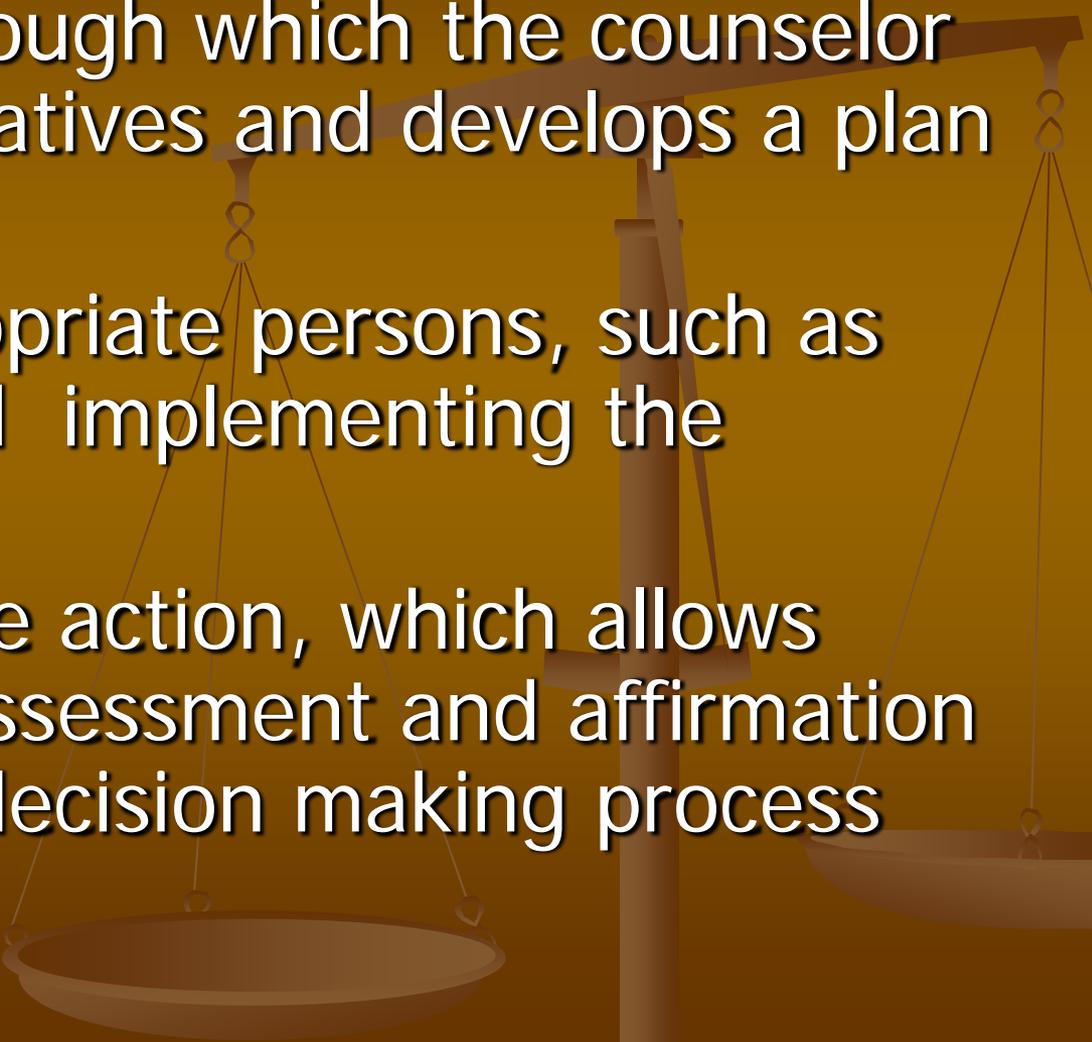
- Sensitivity to the moral dimensions of counseling. This includes not only professional ethics, but also personal principles and philosophy consistent with the profession
  - Identification of the type or category of dilemma and alternative courses of action
  - Referral to the Code of Ethics and professional guidelines for guidance
- 

# Ethical Decision Making

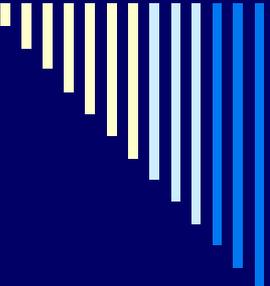
- Examination of the relevant federal and state regulations and case law for additional guidance
- Examination of relevant ethics literature for perspective
- Application of fundamental philosophical principles and theories to the situation
- Consultation with other colleagues about the dilemma



# Ethical Decision Making



- Deliberation through which the counselor considers alternatives and develops a plan of action
- Informing appropriate persons, such as supervisors, and implementing the decision
- Reflection on the action, which allows counselors an assessment and affirmation of their ethical decision making process



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# RESOURCES

- Corey, G. (2001). *Theory and practice of counseling and psychotherapy* (6<sup>th</sup> ed.).  
Belmont, CA: Brooks/Cole.
  - <http://www.cms.hhs.gov/HIPPAGenInfo/>.
  - Snow, B. (2006). *ASAC drug court confidentiality* -FMJ Multi- County.
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