



AD*Vantage*
Counseling & Education Services, LLC

Ethical and Legal Issues in Mental Health Care

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- ▶ **Therapist**
- ▶ **Professor**
- ▶ **Clinical Supervisor**
- ▶ **Trainer**

WIN A PRIZE!!!



@dr_ashasd

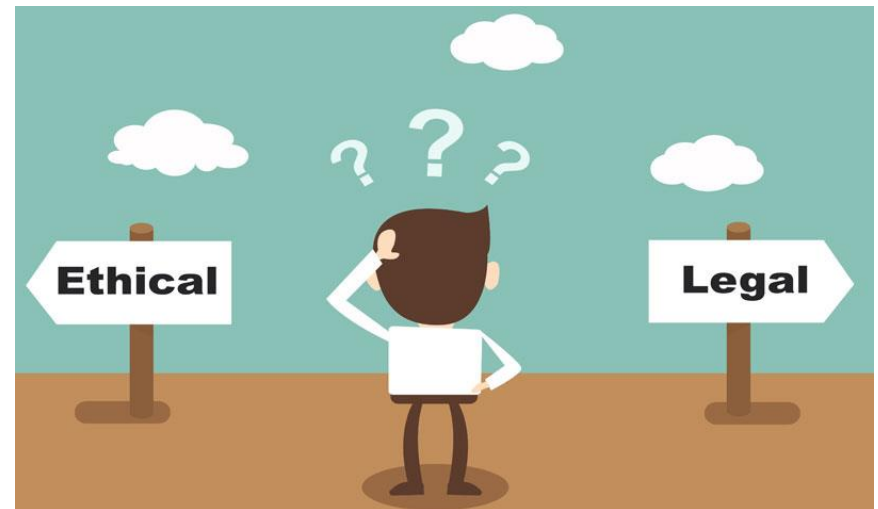
Case study

- ▶ Carson is a 16yo junior in high school. She lives in a single-family home with her mother (a single mother), who is a very involved parent and her little sister, who is equally active at her middle school. Prior to her junior year, she played basketball, maintained a 3.8 GPA and was an active member of 2 student organizations. 2 months into the school year, her mother had a near-death experience that kept her hospitalized for 2 weeks, causing financial strain on the household, and requiring Carson's assistance with care of her sister. Carson planned to attend the homecoming dance but missed the deadline to purchase tickets during this time. The homecoming committee did not extend any grace. She also did not perform her best at basketball tryouts because of inability to practice as frequently and was cut from the team. After this blow, she gained 50 pounds in a 2-month period and now has C's in all of her classes.
- ▶ You receive an email from Carson's out-of-state aunt, telling you that she spent the night in the emergency room, due to suicidal ideation, but was released and in school that day. The aunt requests that you call Carson to check on her because she does not have another therapy appointment for 3 more days. How do you proceed? What is your role?

Why Do we have to keep doing this? Seriously...Every. Single. Year.

- ▶ Job Security Threats
- ▶ Ethics Complaints
- ▶ Licensure Complaint
- ▶ Lawsuits Against Agencies

Benefits are for both the client and the professional!!!



Morals

Involves judgment or evaluation of action.

Associated with such words as *good, bad, right, wrong, and should.*

The quality of being in accord with certain standards

Values



Team Work: Working collaboratively on shared goals; and making “doing the right thing” the default setting for every decision and action.



Integrity: Creating a platform of transparent and ethical actions that is at the heart of everything we do.



Respect: Ensuring that every person we work with, both inside and outside the company, is valued and treated fairly.

Ethics



Eth-ic _ *noun*

A set of principles of right conduct.

A theory or a system of moral values.



ethics (*used with a sing. verb*) The study of the general nature of morals and of the specific moral choices to be made by a person; moral philosophy.



ethics (*used with a sing. or pl. verb*) The rules or standards governing the conduct of a person or the members of a profession: *medical ethics*.



Focus on principles and standards that govern relationships between individuals.



Ethical codes are guidelines for what we can (should) and cannot (should not) do.



Each counseling situation is unique and sometimes the counselor must interpret the code.

Ethics basics

- ▶ Ethical codes are not set in stone. They serve as principles upon which to guide practice.
- ▶ There are two dimensions to ethical decision making:
 - ▶ Principle ethics: Overt ethical obligations that must be addressed.
 - ▶ Virtue ethics: Above and beyond the obligatory ethics and are idealistic.

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Ethical issues and society - examples

- Involvement in the community
- Honesty, truthfulness and fairness in marketing
- Use of animals in product testing
- Agricultural practices e.g. intensive farming
- The degree of safety built into product design
- Donation to good causes
- The extent to which a business accepts its alleged responsibilities for mishaps, spillages and
- leaks
- The selling of addictive products e.g. tobacco
- Involvement in the arms trade
- Trading with repressive regimes

LAW

- ▶ **law** _ *noun*
 - ▶ A rule of conduct or procedure established by custom, agreement, or authority.
 - ▶ The body of rules and principles governing the affairs of a community and enforced by a political authority; a legal system: *international law*.
 - ▶ The condition of social order and justice created by adherence to such a system: *a breakdown of law and civilized behavior*.
 - ▶ A set of rules or principles dealing with a specific area of a legal system: *tax law; criminal law*.
 - ▶ A piece of enacted legislation.
 - ▶ Something, such as an order or a dictum, having absolute or unquestioned authority: *The commander's word was law*.
-
- ▶ The precise codification of governing standards that are established to ensure legal and moral justice.
 - ▶ Created by legislation, court decision, and tradition.
 - ▶ Does not dictate what is ethical in a given situation – only what is legal.

Ethics basics

- ▶ Client Welfare: Client needs come before counselor needs and the counselor needs to act in the client's best interest.
- ▶ Informed Consent: Counselors need to inform clients as to the nature of counseling and answer questions so that the client can make an informed decision.
- ▶ Confidentiality: Clients must be able to feel safe within the therapeutic relationship for counseling to be most effective. What the client says stays in the session unless the client is threatening harm to self or others.

Important terms


- ▶ **autonomy**, or fostering the right to control the direction of one's life
- ▶ **nonmaleficence**, or avoiding actions that cause harm;
- ▶ **beneficence**, or working for the good of the individual and society by promoting mental health and well-being;
- ▶ **justice**, or treating individuals equitably and fostering fairness and equality;
- ▶ **fidelity**, or honoring commitments and keeping promises, including fulfilling one's responsibilities of trust in professional relationships; and
- ▶ **veracity**, or dealing truthfully with individuals with whom counselors come into professional contact

What's the Difference between...

- ▶ Confidentiality- The legal and ethical duty of the mental health professional to protect private client communication
- ▶ Privilege- Protection of confidential communication in a judicial or administrative proceeding. Privilege belongs to the clients. It is established and define by the state usually.
- ▶ Privacy- Designed to establish minimum standards for the protection of private healthcare information (HIPAA). It has implications for how and to whom authorized health information may be communicated.

Case Study

- ▶ Marcus is your client. He is a 15yo, male, high school, basketball player. Although there have been college coaches scouting him since his sophomore year, going into his senior year, his coach did not allow him on the team, stating, “There were just other player better than you and I have to do what’s best for the team.” While in your office, Marcus states, “I hate coach so much, I want him to die.”
- ▶ Do you report?

- 
- ▶ During the next session, Marcus reports that his father got a new pistol that Marcus has been allowed to shoot. He later states that he plans to go to the school during the 1st practice and talk to the coach.
 - ▶ Is there anything you need to do? If so, what?

WHAT IS THE COUNSELING COMPACT?

The Counseling Compact is an interstate compact, or a contract among states, that allows professional counselors licensed and residing in a compact member state to practice in other compact member states without the need for multiple licenses.

WHAT DOES THE COUNSELING COMPACT DO?

The Counseling Compact:

- Addresses increasing demand to provide professional counseling services.
- Authorizes both telehealth and in-person practice across state lines in Counseling Compact states.
- Is similar in form and function to occupational licensure compacts for Psychology (i.e. PsyPact) and Occupational Therapy, among other necessary compacts.

HOW DOES THE COUNSELING COMPACT WORK?

Professional counselors who meet uniform licensure requirements are able to quickly obtain a privilege to practice, which is equivalent to a license to practice counseling in other states.

The Compact creates a shared interstate licensure data system, allowing for near-instant verification of licensure status. The data system also enhances public protection by ensuring that member states share investigative and disciplinary information with one another.

WHAT STATES HAVE SIGNED THE COMPACT INTO LAW?

So far, ten states have signed the Compact into law:

- Georgia
- Maryland
- Alabama
- Mississippi
- West Virginia
- Utah
- Maine
- Florida
- Kentucky
- Nebraska

In total, we have partnered with members and elected officials to introduce the Counseling Compact in 21 states this session as we have seen great bipartisan interest across the nation.

Prosenjit & Tatiana

<https://timeline.com/tanya-tarasoff-notify-law-7d43951cb004>



Duty to report/warn

- ▶ Suicidal Client
- ▶ Dangerous Client
 - ▶ Homicidal
 - ▶ Tarasoff
- ▶ Abuse Reporting
 - ▶ Child
 - ▶ Elder
 - ▶ Vulnerable adult
- ▶ Unprofessional conduct
 - ▶ Notice to employer
 - ▶ Licensure board complaint

ACA Code of Ethics

- ▶ 1961- First ACA Code of Ethics (focused on the counselor)
- ▶ 2005- The version that counselors have followed up until recently
- ▶ 2014- New American Counseling Association code released.
 - ▶ Changes necessary due to changes in technology and laws.

Main Changes in 2014 ACA Code

- ▶ PROHIBITS establishment of a personal virtual relationship with clients...In other words, DON'T "FRIEND" YOUR CLIENTS"
- ▶ Imposition of counselor values: Code clarifies that we make a referral on the basis of skill-based competency, NOT personal values
- ▶ Dealing with contagious and life-threatening diseases: 2014 code removed the requirement to confirm a contagious and life-threatening diagnosis, replacing it with relying on relevant laws.
- ▶ Extension of confidentiality to include APPOINTMENTS

Most Common MH/SA Ethical issues

Dual Relationships: When a counselor has more than one relationship with a client (e.g. The counselor is a friend and the counselor.)

- Counselors may lose their objectivity and clients may be placed in a situation in which they cannot be assertive and take care of themselves.
- The thought and emotion that will take place will most likely have an impact on the therapeutic relationship.

Sexual Relationships/Allegations: Professional organizations strongly prohibit sexual relationships with clients and in some states it is a criminal offense.

Other Ethical Dilemmas

To contact or not to contact parents

Unprofessional interference of a colleague.


Reporting crimes (drugs, theft, etc.) by client)

Client's disagreement with diagnosis.

How much detail to put in the progress notes.

Boundary issues

Boundary Blurring: Boundary fuzziness where there is a chance for confusion (old classmates, friends/family, casual connection)



Boundary Crossing: Intentional crossing of boundary separating professional and non-professional (invitation from client to attend event)



Boundary Violation: Counselor initiates or participates in boundary crossing in which client is likely harmed. (business relationship, romantic/sexual)

Gifts and services



The following direct and indirect forms of compensation should be strictly prohibited:



· Separate individual payment or commission arrangements;



· Personal loans or services;




· Gifts from either current or prospective clients;



· Excessive entertainment and travel; and



· Gifts of more than nominal value from other than current or perspective students.



<https://www.11alive.com/article/news/investigations/the-reveal/bad-therapy-reveal-investigation/85-6edfdbf0-5941-4a56-9b1b-66649d695771>

Individual vs group therapy

- ▶ Group therapy creates unique challenges when it comes to ethical issues.
- ▶ Conduct activities while maintaining client safety in accordance to the ethical standards.
- ▶ Can you guarantee confidentiality?

What do we do for groups?

- ▶ During orientation, provide all group members with relevant information, emphasizing that confidentiality levels will decrease.
- ▶ Regardless of other group members, you are required to keep info confidential.
- ▶ Give clients the freedom to leave group (Doesn't mean they don't deal with the logical consequences)

Family Counseling

- ▶ Confidentiality (No family secrets kept by therapist)
- ▶ Different rules when working with children.
 - ▶ Who is the guardian?
 - ▶ Who has legal rights to documents?
- ▶ Mandated reporting
- ▶ Legal (Subpoena vs Court Order)

Subpoena vs Court Order

- ▶ Determine if it is a request, or mandate signed by a JUDGE. Attorneys will try to trick you.
- ▶ Subpoenas typically have a date and time and can be ore flexible.

Never alter or destroy documents that have been subpoenaed...Do you notes on time so you don't have to produce them when they are subpoenaed.

- ▶ If concerns remain, seek legal advice from your own independent attorney.

Personal relationships with colleagues?

- ▶ Dating?
 - ▶ Outings?
 - ▶ Hook-ups with family members?
 - ▶ ...Harassment
 - ▶because when the relationship ends...
-
- ▶ What if you're their supervisor? (ACES Code)
 - ▶ Clinical Supervision
 - ▶ Administrative Supervision
 - ▶ www.acesonline.net

The Ultimate Ethical Violation!!!



Multicultural/Diversity Considerations

- ▶ B.1.a. Multicultural/Diversity Considerations Counselors maintain awareness and sensitivity regarding cultural meanings of confidentiality and privacy. Counselors respect differing views toward disclosure of information. Counselors hold ongoing discussions with clients as to how, when, and with whom information is to be shared.
- ▶ E.8. Multicultural Issues/ Diversity in Assessment Counselors select and use with caution assessment techniques normed on populations other than that of the client. Counselors recognize the effects of age, color, culture, disability, ethnic group, gender, race, language preference, religion, spirituality, sexual orientation, and socioeconomic status on test administration and interpretation, and they place test results in proper perspective with other relevant factors.
- ▶ **F.7.c. Infusing Multicultural Issues/Diversity Counselor educators infuse material related to multiculturalism/diversity into all courses and workshops for the development of professional counselors.**

Joe Jenkins

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- ▶ Joe is a 62 yo Black male heterosexual community counselor. His immediate supervisor is a younger White woman named Karen. While reviewing Joe's files, Karen noticed that the last 5 White female clients on Joe's caseload either went awol or relapsed while in treatment. Karen took it upon herself to personally reach out to each woman and ask them why they left treatment saying, "Did Joe do something to you? You can let me know if he did and we can get you right back into treatment." None of the women stated that Joe had done anything, but 2 called other staff members to let them know about the phone call.
- ▶ You are one of the staff members who go the call. What do you do?

How Many Violations?



Protection and use of...



Time

When you're
supposed to be on
the clock



Equipment

Belonging to the
employer



Resources

Ethical decision making model

1. Define the problem, dilemma, and sub-issues.
 - What are the core concerns (legal, ethical, clinical, combination)?
2. Identify the relevant variables
 - Who are the people?
 - What are the issues, dynamics, and multicultural considerations?
3. Know the laws, ethics codes, and agency policies.
 - What federal and state laws, ethics code, and applicable institutional policies apply to the facts
4. Be alert to personal influences.
 - What personal values, bias/prejudice, or counter-transference may be affecting the perception?

EDMM (cont)

- ▶ Obtain outside perspective.
 - ▶ Whenever possible, engage in colleague consultation and/or supervision and/or obtain legal advice.
- ▶ Enumerate options and consequences.
 - ▶ What are the possible courses of action and intended consequences? ALSO consider the unintended consequences. Remember to involve the client in the decision-making unless clinically inappropriate (ex: Client involvement could possibly trigger violence against a 3rd party)
- ▶ Decide and take action.
 - ▶ Implement the decision and be prepared to reconsider options
- ▶ Document decision-making and follow-up actions
 - ▶ Provide written evidence of clinical and ethical decision-making and results of implementation. (Because if you didn't document it, it didn't happen)



Center for Mental Health and Addiction Recovery

Counselor Toolkit

with Dr. Dawn Huebner

We have a situation!!!

- ▶ Jessica was a 20yo who had been seen together with her parents in family therapy at your agency. This was initially because Jessica had been experimenting with various drugs. The family prematurely terminated after some positive changes. About a year later, Jessica was using heroin. After a hostile exchange with her parents, She called you high and hysterical, threatening to kill herself. You asked her to go to a hospital. She hung up in your face!
- ▶ How do you proceed?

Records & documentation

- ▶ Encryption
- ▶ Email/Texting
 - ▶ What should and should not be included?
 - ▶ Who might have access to it?
- ▶ Purpose of Records
 - ▶ Clinical Management
 - ▶ Legal Implications for Clients
 - ▶ HIPAA Compliance
 - ▶ Risk Management
 - ▶ Continuation of services

HIPAA/HITECH act

- ▶ HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH Act (HITECH Act)
 - ▶ Enacted as a part of the American Recovery and Reinvestment Act of 2009.
 - ▶ Addresses privacy and security concerns regarding electronic transmission of health information
 - ▶ Provisions are also applicable to paper and oral communication



Whether or not to notify individual

- ▶ Nature and extent of breach: type of identifiers, likelihood of re-identification (SSN, names, credit card #, and sensitive clinical info would call for notice)
- ▶ Who the unauthorized person was who received the information
- ▶ Whether the information was viewed or completely acquired
- ▶ Extend to which risk has been managed

Consider the following scenarios:

- ▶ Laptop with client information has been lost or stolen
- ▶ Discharged employee was dismissed before laptop was in possession by agency
- ▶ “Snatch and grab” of paper file by client with severe mental illness
- ▶ Facebook post of/by employee with files in the background

Telemental Health

- ▶ What does this include?
 - ▶ Phone
 - ▶ Video Conference
 - ▶ Text/Messaging Services

- ▶ Non-HIPAA Compliant Software:
 - ▶ Skype
 - ▶ Duo
 - ▶ FaceTime

*NO RULES PROHIBITTING TELEMENTAL HEALTH IN ALABAMA YET
They are currently drafting these and NBCC has rules

How Many Here...

- ▶ 1. have a cell phone
- ▶ 2. use a laptop
- ▶ 3. have gone on YouTube
- ▶ 4. upload your digital photos
- ▶ 5. text message
- ▶ 6. have a Twitter or Facebook account
- ▶ 7. have a Skype or iChat account
- ▶ 8. have an avatar
- ▶ 9. have been on Second Life

Who Are You?

- ▶ **Digital immigrants – people immigrated to new technologies**
 - like real immigrants - retain their accent
 - often hinders communications with “natives”
- ▶ **Digital natives – native speakers of new digital language**
 - grew up where these technologies existed
 - technology changed how their brains work.
- ▶ **Early adopters – find and try new technologies**
 - integrate into their lives




From: Masahiro Toyama
Subject: **Thank you...**
Date: March 24, 2011 10:45:11 AM EDT
To: Edina Renfro-Michel

Hello Dr. Renfro-Michel, everything is so overwhelming... I'm about to kill myself... I just want to say thank you to you. Masahiro

Is using email ok?

Email, Texting, IM

- ▶ Email, Texting, IM-ing clients: records, personal
- ▶ • Block client emails (they may have multiple email addresses)
- ▶ • Accidental, unintentional requests and disclosures (invite all, reply all)
- ▶ • Unintentional personal disclosures (photos, likes, hobbies, recent activities, friend lists, comments, sexual identity groups)



What Do you think about skype or other distance video?

- ▶ Positives
- ▶ Pitfalls
- ▶ Slippery slope?

Safe Video
Conferencing





Social Media



Social Media/ Networking

Types of social networking

- ▶ Email
- ▶ Texting & Instant Messaging
- ▶ Blogs
- ▶ On-line Media
 - ▶ YouTube
- ▶ Social Media sites:
 - ▶ Facebook > SnapChat> Twitter > Instagram > LinkedIn

Virtual Professional Presence

- ▶ In cases where counselors wish to maintain a professional and personal presence for social media use, separate professional and personal web pages and profiles are created to clearly distinguish between the two kinds of virtual presence

What Does This Look Like?



- You must maintain two separate identities in the online environment
- Keep personal information about family, etc. on your personal social media
 - Be aware of your privacy settings on your personal social media
- Any phone contacts you have can potentially have contact to your personal social media
- Be careful about engaging with current or previous clients on business social media



Client Virtual Presence

Counselors respect the privacy of their clients' presence on social media unless given consent to view such information.

What Does This Look Like?

Don't look up, investigate, check out, or "research" your clients on social media unless you have their written permission to do so.

Use of Public Social Media



Counselors take precautions to avoid disclosing confidential information through public social media

What Does This Look Like?

Don't discuss frustrations or client issues on personal or professional social media

Be careful about how much information you disclose when using social media to make referrals

Friending becomes personal and social

- ▶ Would you provide the same connection and information to clients face-to-face ?
- ▶ Would you post your family genogram and photos on your office wall?
- ▶ Does your client post like a friend or family member?
- ▶ What if you reject a client's friend request?
(Abandonment, Trust, Boundaries, Confidentiality)

Things to Consider

- ▶ • Clients interacting with you?
 - Friending, accepting and contacting friends
 - unlinking friend, Facebook profile, LinkedIn
- ▶ • Interacting with your clients?
 - Status updates, Googling, accessing their information (objectivity, trust, relationship, exploiting)
- ▶ • Use another profile for family and friends (private profile)

More to Consider

- ▶ • State your policies clearly regarding email, Facebook/Social Media, websites, communications.
 - “I do not accept friend invitations or “I am not adding friends here. If you want to see information on my practice visit my website at ...”
- ▶ • Discuss and process SM policy in sessions. Process violations and their impact on relationship, confidentiality, boundaries, etc.
- ▶ • Encourage pseudonyms not linked to regular email or friending

Uses for employers or private practitioners

- ▶ Branding or marketing
- ▶ Fundraising
- ▶ Screen Candidates
- ▶ Increase Clientele
- ▶ Recruit employees, interns, or volunteers
- ▶ Inform the community of events

Things to Think About

- ▶ How comfortable are you with the technology?
- ▶ What types of boundaries are you able/willing to set?
- ▶ What might be the positive aspects of the technology?
- ▶ What might be the pitfalls?
- ▶ How do you know when you are sliding down that slope?



Positive Impact of Technology in the workplace

- ▶ Instant transmission of info to specific people or a broad audience
- ▶ Ease of referral sources and ability to locate contact information (even if you don't want to be contacted)
- ▶ Increased productivity and use of alternative working arrangements (working from home)

Negative Impact of technology

- ▶ Blogs/status updates used to criticize
- ▶ Confidential information can be leaked
- ▶ Harassment via email, direct messages, etc.
- ▶ Internet access can reduce productivity of employees if not monitored
- ▶ Just poor decision making by people (because we're all human)
 - ▶ Emotional posting

Reputational Harm to agencies

- ▶ Disgruntled Employees
 - ▶ A former Intel employee sent over 200,000 e-mails to over 35,000 employees complaining about his treatment by Intel
- ▶ Clients who were discharged for disciplinary reasons
 - ▶ Research by Convergys Corp. has shown that negative customer reviews on social media sites can cost a company about 30 customers.
- ▶ Employee pursuits of “fifteen minutes of fame” via the Internet

Reputational harm to employees

- ▶ Defamation- Plaintiff must prove the defendant published a false statement concerning the plaintiff that tends to harm the plaintiff's reputation.
- ▶ Agency/Employer can be liable if the employee had apparent authority to speak on its behalf
- ▶ Beware of personal references!!!

Searching for client info... (clients aren't the only ones with boundary issues)

- ▶ Prior client notification and permission?
- ▶ Knowing before client discloses in session changes objectivity and perception
- ▶ Suicide information read on the Wall or in Facebook update
- ▶ Tell explain client you know?
- ▶ Follow your client to a bar and observe behavior?
- ▶ Speak with their friends without written permission?

Who wants to win a prize?

NEVER HAVE I
EVER !!!

Will you...

- ▶ Email clients...
- ▶ • Respond to a text message
- ▶ • Be a Facebook friend
- ▶ • Meet a client in an online platform (dating app, etc.)
- ▶ • Open your own social media account
- ▶ • Post info on Facebook for clients
- ▶ • Have your own webpage (that you maintain yourself)
- ▶ • Maintain a blog on counseling issues
- ▶ • Hold a video chat
- ▶ • Get rid of your paper calendar and appointment book

Reporting

- ▶ Discrimination/Harassment/Retaliation
 - ▶ Next Level Management
 - ▶ EEOC (They're going to ask if you told management first)
 - ▶ Licensure/ Certification Boards
- ▶ Potential Fraud/Audit Matters
 - ▶ Next Level Management
 - ▶ IRS
 - ▶ Licensure/Certification Boards
- ▶ Interpersonal Conflict/ Dress Code/Unprofessional Conduct
 - ▶ Next Level Management
 - ▶ Human Resources
- ▶ Violations of the Law:
 - ▶ Next Level Management
 - ▶ Human Resources
 - ▶ If you are not satisfied with the results...take it higher

Questions?



Thanks for Coming!

STAY CONNECTED



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