LEGAL AND ETHICAL ISSUES IN MENTAL HEALTHCARE

Presented by:

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&

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ACBH Alabama Council for Behavioral Healthcare
Solutions for Healthy Minds and Whole Health

ICE

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Ms. Joanne Terrell is a licensed Forensic Social Worker and currently serves as the Program Director for Mitigation and Mediation Resources Services of Alabama.

Joanne earned her Bachelor of Arts Degree in Psychology from the State University of New York and her Master's Degree of Social Work from The University of Alabama School of Social Work, where she was a faculty member for over 20 years. Joanne was inducted into the University of Alabama's School of Social Work Hall of Fame after retiring from full-time teaching in June 2015.

Joanne has provided numerous training and workshops designed for social workers, mental health practitioners, and criminal justice professionals. She has also provided clinical supervision to hundreds of Alabama's social workers working toward their LICSW for over 20 years.

INTEGRATING ETHICS AND ADVOCACY

I. DEFINITIONS OF MENTAL HEALTH PRACTICE

"The provision of mental health services for the diagnosis, treatment and prevention of mental, behavioral and emotional disorders in individuals, families and groups"

- Clinical Social Work Foundation, 1997

I. DEFINITIONS OF CLINICAL SOCIAL WORK PRACTICE

"Clinical Social Work entails liberating, supporting and enhancing people's adaptive capacities and increasing the responsiveness of physical and social environments to people's needs"

-Hepworth and Larsen, Direct Social Work Practice, 2006

II. EXAMPLES OF MENTAL HEALTH PRACTICE

A. Therapy
- Private Practice
- Mental Health Agencies
- Contract with Agencies
- Contracts with State/Federal Government

B. Clinical/Mental Health Assessments
- Court Ordered
  - Drug and Alcohol Assessments
  - Adaptive Skills Functioning
  - Risk Assessments for Criminal Offenders
  - Mitigation Assessments
  - Mental Status Examinations
  - Suicidal/Homicidal Assessments
  - Competency Assessments

III. ETHICAL ISSUES

- Duty To Warn
- Duty To Protect
- Boundary Maintenance/Violations
  - "Once a client always a client"
  - "Once the relative of a client always the relative of a client"
  - Self-disclosure
  - Dual Relationships
- Pro Bono Work
  - When, How Often, Under What Circumstances
- Self-Determination Issues (Client)
- Abandonment Issues

IV. ADVOCACY ISSUES

"Advocacy consists of those purposeful efforts to change specific existing or proposed policies or practices on behalf of or with a specific client or group of clients.

- Ezell – Advocacy in the Human Services, 2006

- McCormick - To Defend or Promote a Cause, 1970, Panitch, 1974

CONDITIONS THAT DEMAND CLIENT ADVOCACY IN MENTAL HEALTH PRACTICE

- Marginalization
- Stigmatization
- Racial/Cultural /Sexual Stereotyping
- Denial/Barriers To Needed Services
  - Medication
  - Residential Treatment
  - Least Restrictive Environment

CONDITIONS THAT DEMAND CLIENT ADVOCACY IN MENTAL HEALTH PRACTICE

- Types of Advocacy
  - Agency Advocacy
  - Legal Advocacy
  - Community Advocacy

CONDITIONS THAT DEMAND CLIENT ADVOCACY IN MENTAL HEALTH PRACTICE

- Outreach to Vulnerable Populations:
  - Reduces marginalization and sense of disenfranchisement
  - Reduces stigmatization and stereotyping
  - Gains access to resources & opportunities
  - Navigating the Current Political Environment

OUTREACH ACTIVITIES

- Developing/Facilitating Special Interests and Related Initiatives:
  - Fatherhood/Father's Rights Project
  - Survivors of Suicide Group
  - Survivors of Sexual Abuse Group
  - Sexual Identity/Gender Issues
  - Domestic Violence Survivors

OUTREACH ACTIVITIES

- Facilitating Community Organization Efforts to Help Clients Gain Needed Resources or Opportunities:
  - Lobbying Legislators
  - Exposing Injustices
  - Developing Need Based Clinics

ETHICS AUDIT RISK-MANAGEMENT STRATEGY

-Frederic G. Reamer

Audit:

"official examination and verification of records and other organizational practices."

- Webster's College Dictionary

MENTAL HEALTH ETHICS AUDIT TWO KEY FACTORS

- Examine current knowledge in the literature about ethics and their relevancies in practice settings.

- Ethical risks and ethical decision making.

I. ETHICAL RISKS

A. Are there procedures in place to identify ethics related risks and prevent ethics complaints and ethics related litigation?

I. ETHICAL RISKS

B. Imminent and foreseeable harm to clients and others.

1. Key Risk Areas
2. Client Rights

Are there comprehensive, clearly worded, and comprehensible summaries of clients' rights?

These policies should address confidentiality, privacy, release of information, informed consent, access to services and records, as well as service plans and provision of services, options for alternative services and referrals, the right to refuse services, termination of services, and grievance procedures.

I. ETHICAL RISKS

B. Imminent and foreseeable harm to clients and others.

3. Confidentiality and Privacy:

- Limits of confidentiality.
- Release of information to parents.
- Sharing of confidential information among participants in family, couples, marital and group counseling.
- HIPPA policies and procedures.

I. ETHICAL RISKS

B. Imminent and foreseeable harm to clients and others.

4. Informed Consent:
   - Required for confidentiality issues, program admission, service delivery, video taping, and audio taping.
   - Key elements to informed consent forms.
   - Insure that coercion and undue influence don't affect a client's decision to consent.
   - Client's are mentally capable of providing consent.

I. ETHICAL RISKS

B. Imminent and foreseeable harm to clients and others.

5. Informed Consent:
   - Client's consent to specific procedures or actions (as opposed to providing blanket or general consent).
   - Clients are informed of their right to refuse or withdraw consent.
   - Clients' decisions are based on adequate information.

I. ETHICAL RISKS

B. Imminent and foreseeable harm to clients and others.

6. Boundary Issues and Conflict of Interests:
    - Have clear criteria been set to help mental health professionals maintain proper boundaries with clients.
    - Does this criteria address the following issues:
        - Friendships

I. ETHICAL RISKS

B. Imminent and foreseeable harm to clients and others.

6. Boundary Issues and Conflict of Interests:

Does this criteria address the following issues:

- Friendships with former clients.
- Encounters with clients in public settings.
- Physical contact.
- Gifts to and from clients.
- Financial conflicts of interests.
- Delivery of services to two or more people who have a relationship with each other (such as couples or family members).

I. ETHICAL RISKS

B. Imminent and foreseeable harm to clients and others.

6. Boundary Issues and Conflict of Interests:

- Bartering with clients for goods and services.
- Attending clients' social or lifecycle events.
- Self-disclosure to clients.

I. ETHICAL RISKS

B. Imminent and foreseeable harm to clients and others.

7. Documentation:
   - Are standards of practice being followed?
   - Are there procedures in place to ensure that mental health professionals are avoiding harmful language that may rise to the level of defamation of character?
   - Are there procedures in place to ensure that mental health providers are also avoiding disrespectful, derogatory, pejorative, or inaccurate statements that could expose the practitioner to ethical or legal risks?

I. ETHICAL RISKS

Imminent and foreseeable harm to clients and others.

8. Fraud:
    - Are there policies and procedures in place to prevent various forms of fraud – especially fraudulent documentation and billing?

I. ETHICAL RISKS

B. Imminent and foreseeable harm to clients and others.

9. Termination of Services:

Mental health practitioners expose themselves to risk when they terminate services improperly.

For example:

- If a professional leaves an agency suddenly without adequately referring a client in need to another practitioner.
- Terminating a client who has not paid an outstanding balance.
- Related "abandonment" issues.

Abandonment:

A legal concept that refers to instances when a professional is not available to a client when needed.

Once a practitioner begins to provide services to a client, they incur an ethical and legal responsibility to continue that service or properly refer a client to another competent professional.

I. ETHICAL RISKS

B. Imminent and foreseeable harm to clients and others.

11. Practitioner Impairment:
    - Failure to provide competent care.
    - Violation of professional ethical standards.
    - Sexual involvement with a client.
    - Flawed or inferior services.
    - Failure to carry out professional duties as a result of substance abuse or mental illness.
    - An ethics audit should monitor the extent to which mental health practitioners understand the nature of professional impairment, possible causes and warning signs, and have procedures in place to prevent, identify, and respond appropriately to impairment.

MORNING PRESENTATION BY *JOHNSON & JOHNSON*

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SOCIAL WORK AND ELDER LAW

SOCIAL WORK AND ELDER LAW

A. Critical legal/psychosocial issues facing the elderly:
   - Elder abuse (physical, emotional, and financial)
   - Elder Abandonment (from hospital or home)
   - Elder neglect

SOCIAL WORK AND ELDER LAW

A. Critical legal/psychosocial issues facing the elderly:

- Self-Determination:
  - Medical issues
  - Legal issues
  - Psychosocial issues

SOCIAL WORK AND ELDER LAW

A. Critical legal/psychosocial issues facing the elderly:

- Least restrictive environment:
  - Home health care
  - Assisted living facilities
  - Group home/boarding home
  - Nursing homes
  - Psychiatric facilities

SOCIAL WORK AND ELDER LAW

B. Competency issues:

Legal Capacity and Competency
VS
Medical Capacity

I. LEGAL CAPACITY

- Legal qualification:
  - Age 12 – formal logical thinking
  - Age 14 – full decisional capacity

- Competency, power of fitness:
  "Mental Ability to Understand the Nature and Effects of One's Acts."
  - Black's Law Dictionary

- Capacity to sue: the legal ability of a person or entity to sue or to be brought into the counts of a forum.

II. LEGAL COMPETENCY

Definition A:

The presence of these characteristics or absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of law.

II. LEGAL COMPETENCY

Definition B:

Competency to stand trial:

- A person lacks competence to stand trial if he or she lacks the capacity to understand the nature and objective of the proceeding or to consult with the attorney and to assist in preparing his or her defense.

II. LEGAL COMPETENCY

Definition C:

To be determined "Incompetent" by a court means a person may not vote, enter into a valid legal contract, or hold a license.

To be determined "Incapacitated" is less encompassing. A person can be determined to be incapacitated in certain aspects of their lives. For example: financial decisions but not other decisions.

II. LEGAL COMPETENCY ISSUES

Guardianship:

- Of the Person/Medical Decisions.
- G.A.L. (Attorney) for a person judged to lack "capacity."

Conservatorship:

- Of Funds/ Financial Decisions.
- Person or entity has to post bonds to insure assets.

To obtain either or both of the above, a letter is needed from a medical doctor stating that the person lacks medical capacity but still may have legal competency. To determine just medical capacity, a licensed mental health professional can conduct a Mental Status examination.

III. MEDICAL CAPACITY

"Capacity is essentially the ability to make a decision. It is an absolutely basic element in the process of informed consent. The consent of a person who is incapable does not validly authorize a clinician to perform medical treatment. Conversely, a clinician who withholds treatment from an incapable patient who refuses treatment may be held liable to that patient if the clinician does not take reasonable steps to obtain some other legally valid authorization for treatment."

"Determining a patient's Capacity to Share Decision Making" – Robert J. Boyle, M.D.

FACTORS TO BE CONSIDERED WHEN DETERMINING A PERSON'S CAPACITY FROM BOTH A LEGAL AND MEDICAL PERSPECTIVE

1. Individual abilities of the patient.
2. Requirement of the task at hand.
3. Consequences likely to flow from the decision.

- Boyle, M.D.

DIFFERENT VIEWS OF CAPACITY

- Outcome approach:
  - This approach is focused on whether the patient is judged as capable based on the outcome of their decision. If the decision reflects values not widely held or rejects conventional wisdom, then capacity may be called into question. (Patients are less likely to have their capacity questioned if they agree with their clinician).

DIFFERENT VIEWS OF CAPACITY

- Categorical approach:
  - This approach looks to the status of the patient (too old, too young, mentally impaired, too sick) yet still able to participate in living.

DIFFERENT VIEWS OF CAPACITY

- Functional Approach:
  - This one is the most widely accepted standard in determining the patient's capacity. It recognizes functional ability as a decision maker.
  - The President's Commission for the Study of Ethical Problems in Medicine suggested the following factors be addressed in determining whether a patient has capacity:
    1. Understand information relevant to the decision.
    2. Communicate with caregivers about the decision.
    3. The ability to reason about relevant alternatives against a background of reasonably stable personal goals and values.

IV. INFORMED CONSENT

- The burden of ensuring consent lies with the patient's doctor. However, ethical standards of practice recognize informed consent as a decision between patient, physician, nurse, social worker, and other clinicians.

RELATED ISSUES

- All adults patients are considered competent to make decisions about medical care unless a court declares them incompetent.
- However, clinical practice physicians, social workers, nurses, and family members usually make decisions for patients who lack decision making capacity but have not had a formal competency hearing.

RELATED ISSUES

This clinical approach can be ethically justified if the physician and other clinicians have carefully determined that the patient is incapable of understanding the nature of the proposed treatment, alternatives, risks, and benefits.

"Annuals of Internal Medicine" 117 (1992)

When a patient lacks decision making capacity, an appropriate surrogate should make decisions with the physician.

- Durable power of attorney for health care.
- Family members serve as surrogates.
- G.A.L. (appointed by probate judge).

RELATED ISSUES

Situations in which the legal system can be involved with people experiencing mental health problems:

1. Involuntary Commitment:
   - Family members or a mental health professional can file a petition.
2. Adult Protective Services:
   - Involves an adult in need of protection often as an emergency situation and involves Circuit Court.
   - DHR can file for guardianship and/or conservatorship.

MEDICATION: THE RIGHT TO REFUSE

- Assessment of the patient's capacity to decide to refuse medication.
- Self-determination.
- Freedom from coercion (voluntariness).
- Family input.

ETHICAL BEHAVIOR IN A THERAPEUTIC RELATIONSHIP

PRIMACY OF CLIENTS' BEST INTERESTS

A. Boundary Development and Maintenance:

- Romantic Relationships/Innuendos
- Sexual relationships (before, during, and after)
- Sexual harassment (sexual solicitation, any verbal or physical conduct of a sexual nature, or that could be interpreted as sexual in nature even displays of affection). This would include off color jokes and asking inappropriate questions of clients about their sex lives).

PRIMACY OF CLIENTS' BEST INTERESTS

A. Boundary Development and Maintenance:

- Dual relationships:
  - Kinship
  - Employment
  - Student
  - Business associate
  - Colleague
  - Therapist self-disclosure
  - Gifting

PRIMACY OF CLIENTS' BEST INTERESTS

B. Confidentiality:

- Informed Consent.
- Gossip vs. Professional Consultation.
- Educational deducting of identifying information.
- Student "grapevine" issues during internships.
- Research related issues.

PRIMACY OF CLIENTS' BEST INTERESTS

C. Discrimination Issues:

- "Cream of The Crop" clients.
- Exclusion of the "undesirables."
- (Chronically suicidal clients, felony offenders, dual diagnosed personality disorders, troublemakers, nuisance makers).
- Different Strokes for different folks—Arbitrary professional interventions.
- For different clients with similar issues but different client styles.

PRIMACY OF CLIENTS' BEST INTERESTS

D. Termination of Services:
- Termination as Part of the Therapeutic Process.
- Advanced Understanding of Fee Structure.
- Screening vs. Acceptance into Treatment.
- Acceptance into Treatment.

Appropriate and Planned Termination of Services:
- Reasonable notice with explanation.
- Reasons for termination.
- Making a reasonable referral.
- Terminating for lack of payment.

Maximum Benefit and Keeping a Client Too Long

THERAPIST COMPETENCY ISSUES

A. Providing Services/Therapy for Which You have Sufficient Knowledge And Training

(ex. EMDR, CBT, Exposure Therapy, Juvenile Sex Offending Therapy)

THERAPIST COMPETENCY ISSUES

B. Maintaining Continuing Education and Licensure Requirements.

C. Substance Abuse/Dependency Issues Among Therapists.

D. Emotional and/or Psychological Therapist Impairment.

THERAPIST COMPETENCY ISSUES

E. Pressuring Clients to Engage In Potentially Traumatic Therapeutic Techniques:

- Recovered memories.
- Hypnosis.
- Suggesting divorce.
- Confronting their abuser (reunification issues).
- Aligning with an alienating parent against the other parent.

ASSESSMENTS & DOCUMENTATION

WHY RECORDS ARE IMPORTANT

1. Identify the client and the need.
2. Documenting services.
3. Maintaining case continuity.
4. Inter-professional communication.
5. Sharing information with the client.
6. Facilitating supervision, consultation, and peer review.
7. Monitoring the process and impact of service.
8. Educating students and other professionals.
9. Providing data for administrative tasks.
10. Providing data for research.

TYPES OF INFORMATION TYPICALLY INCORPORATED INTO AGENCY RECORDS

1. Date of interaction with client.
2. Basic information about the client.
3. Reason for client contact.
4. More detailed information about the client's problem and situation.
5. Aspects of the implementation process.
6. Follow-up information.
7. Comments and questions to discuss with a supervisor or another worker.

SUGGESTIONS TO GUIDE DOCUMENTATION

1. Choose words carefully.
2. Avoid slang.
3. Avoid words such as “always” and “average.”
4. Avoid sexist language.
5. Avoid labeling people.
6. Do not abbreviate.
7. Be concise.
8. Use paragraphs to divide content into different topics, points, or issues.
9. Distinguish between verified facts and your impression of the facts.
10. Proofread your written products before they go out.

WRITTEN ASSESSMENTS

1. Remember your purpose and audience.
2. Be precise, accurate, and legible.
3. Use labels, subjective terminology, and jargon carefully.

PRIVACY PRINCIPLES IN DOCUMENTATION

1. Confidentiality
2. Abridgment
3. Access
4. Anonymity

CONFIDENTIALITY GUIDELINES IN RECORDING

1. Record only what is essential to the functions of the agency.
   - Identify observed facts and distinguish them from opinions.
   - Use descriptive terms rather than professional jargon.
   - Avoid using psychiatric and medical diagnoses that have not been verified.

CONFIDENTIALITY GUIDELINES IN RECORDING

2. Omit details of clients' intimate lives from case records. Do not include verbatim or process recordings in case files.

3. Maintain and update records to assure their accuracy, relevancy, timeliness, and completeness.

4. Employ private soundproof dictation facilities.

CONFIDENTIALITY GUIDELINES IN RECORDING

5. Keep case records in locked files, and issue keys only to those personnel who require frequent access to the files. Take similar precautions to protect electronically stored data.

6. Do not remove case files from the agency except under extraordinary circumstances and with special authorization.

CONFIDENTIALITY GUIDELINES IN RECORDING

7. Do not leave case files on desks where others might gain access to them. Do not keep case information on computer screens where it may be observed by others.

8. Take precautions, whenever possible, to ensure that information transmitted through the use of computers, email, fax machines, and other technology is secure. Make sure information is sent to the correct party and that identifying information is not conveyed.

CONFIDENTIALITY GUIDELINES IN RECORDING

9. Use in-service training sessions to stress confidentiality and to monitor adherence to agency policies and practice instituted to safeguard clients' confidentiality.

10. Inform clients of the agency's authority to gather information, the conditions under which that information may be disclosed, the principal uses of the information, and the effects, if any, of limiting what is shared with the agency.

CONFIDENTIALITY GUIDELINES IN RECORDING

11. Establish procedures to inform clients of the existence of their records, including special measures (if necessary) for disclosure of medical and psychological records and a review of requests to amend or correct the records.

RECORDING FORMATS

1. Process Recording
2. Video and Audio taping
3. Process notes
4. Diagnostic summary recording
5. Summaries of case conferences
6. Problem-oriented recording
7. Standardized forms
8. Letter
9. Memos
10. Recording in meetings (agendas & minutes)

PROCESS NOTES: THE **SOAP** NOTE

First, typically record:

Presenting problem:

Exactly what the client says the problem is.

S – Subjective Information:

Information the client shares with you regarding the presenting problem.

Report as if a 3rd party was watching and writing about the session.

Use quotations and report the source of information.

O – Objective/Observation Information:

Facts that you collect in the first session.

Later sessions you make observations in this section.

A– Assessment:

Analyze the information that the client has shared and write up your assessment of the client's problem.

Can include observations of client's reactions.

Client's overall condition, problems, progress (or lack of progress)

P – Plan:

Facts that you collect in the first session.

Later sessions you make observations in this section.

AFTERNOON PRESENTATION BY *HEALTH CARE SYSTEMS*

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ACT #2025-455
AGE OF MEDICAL CONSENT

ACT #2025-455: CHANGES IN THE LAW

- Became law in October 2025.
- Individuals under the age of 16 now require guardian consent to receive mental health treatment. Exceptions are provided for certain minors and specific medical services.

Sections 22-8-12, 22-8-13:

- *Access prohibited by a court order.*
- *Guardian subject of an investigation related to a crime against the minor and a law enforcement officer has requested the information not be released to the guardian.*
- *The health care provider has reported the minor as a known or suspected victim of abuse or neglect pursuant to Chapter 14 of Title 26.*
- *The provision of access to the guardian would be in violation of any federal laws protecting the confidentially of participant health information in substance use disorder treatment programs.*

Section 22-8-14:

- *An imminent threat.*
- *Suspected abuse, neglect, or exploitation.*

ACT #2025-455: CHANGES IN THE LAW

- Aims to create parental involvement in their child's heath care by preventing health care providers and governmental entities from withholding health care information. There are exceptions to this rule.

These exceptions:

- *An imminent threat to the health of the student or others.*
- *Suspected Abuse, neglect, or exploitation.*
- *When there is an immediate necessity for immediate grief counseling.*
- *A minor who has graduated high school.*
- *A minor who is pregnant.*
- *A minor who is emancipated.*
- *A minor who is not dependent on a parent or legal guardian for support, living apart from their parents or other individuals.*

ETHICAL DILEMMAS

- "A situation that requires a choice between two evenly balanced alternatives…
- A predicament that apparently defies a satisfactory solution . . . ."
- Webster's II, New Riverside University Dictionary, 1994

ETHICAL ASSESSMENT SCREEN

1. Identify your own relevant personal values in relation to the ethical dilemma that faces you.
2. Identify any societal (i.e. discrimination) values relevant to the ethical decision to be made.
3. Identify the relevant professional values and ethics.
4. Identify alternative ethical options that you may take.
5. Which of the alternative ethical actions will protect to the greatest extent possible your client's rights and welfare as well as the rights and welfare of others?
6. Which alternative action will protect to the greatest extent possible society's rights and interests?
7. What can you do to minimize any conflicts among 1, 2, and 3? What can you do to minimize any conflicts between 5 and 6?
8. Which alternative action will result in your doing the "least harm" possible?
9. To what extent will alternative actions be efficient, effective, and ethical?
10. Have you considered and weighed both the short-term and long-term ethical consequences of alternative actions?

ETHICAL RULES SCREEN

1. Examine the *Code of Ethics* to determine if any of the *Code* rules are applicable. These rules take precedence over the worker's personal value system.

2. If one or more rules apply, follow these.

3. If the *Code* does not address itself to the specific problem, or if several *Code* rules provide conflicting guidance, use the *Ethical Principle Screen.*

A DECISION-MAKING PROCESS

1. Identify the problem and the factors that contribute to its maintenance.
2. Identify the persons and institutions involved in this problem. Include clients, victims, support systems, other professionals, and others as appropriate.
3. Identify the values relevant to this problem held by the participants identified in Step 2, including societal values, professional values, and personal values.
4. Identify the goals and objectives whose attainment may resolve (or at least reduce) the problem.
5. Identify alternative intervention strategies and targets.
6. Assess the effectiveness and efficiency of each alternative in terms of the identified goals.
7. Determine who should be involved in decision making.
8. Select the most appropriate strategy.
9. Implement the strategy selected.
10. Monitor the implementation, paying particular attention to unanticipated consequences.
11. Evaluate the results and identify additional problems.

ETHICAL PRINCIPLES

Ethical Principle 1	*Principle of the protection of life*
Ethical Principle 2	*Principle of equality and inequality*
Ethical Principle 3	*Principle of autonomy and freedom*
Ethical Principle 4	*Principle of least harm*
Ethical Principle 5	*Principle of quality of life*
Ethical Principle 6	*Principle of privacy and confidentiality*
Ethical Principle 7	*Principle of truthfulness and full disclosure*

THANK YOU FOR ATTENDING!

Questions?

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ACBH Alabama Council for Behavioral Healthcare
Solutions for Healthy Minds and Whole Health