

# Managing Risk While Working with Children of High-Conflict Parents

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Dr. Martinez has provided risk management consultations and presentations for The Trust since 2020. He is a licensed psychologist specializing in forensic psychological evaluations. He is licensed in Indiana (Health Service Provider in Psychology), Ohio, and New York. He also has a Temporary Authorization to Practice under PSYPACT and is board certified in forensic psychology by the American Board of Professional Psychology (ABPP). Since 2012, he has maintained a private practice. Dr. Martinez's has served in several national leadership positions that include, but are not limited to, President and Treasurer of the American Board of Forensic Psychology, Chair and Vice Chair of ABPP's Ethics Committee, and Chair of APA's Committee on Professional Practice and Standards.

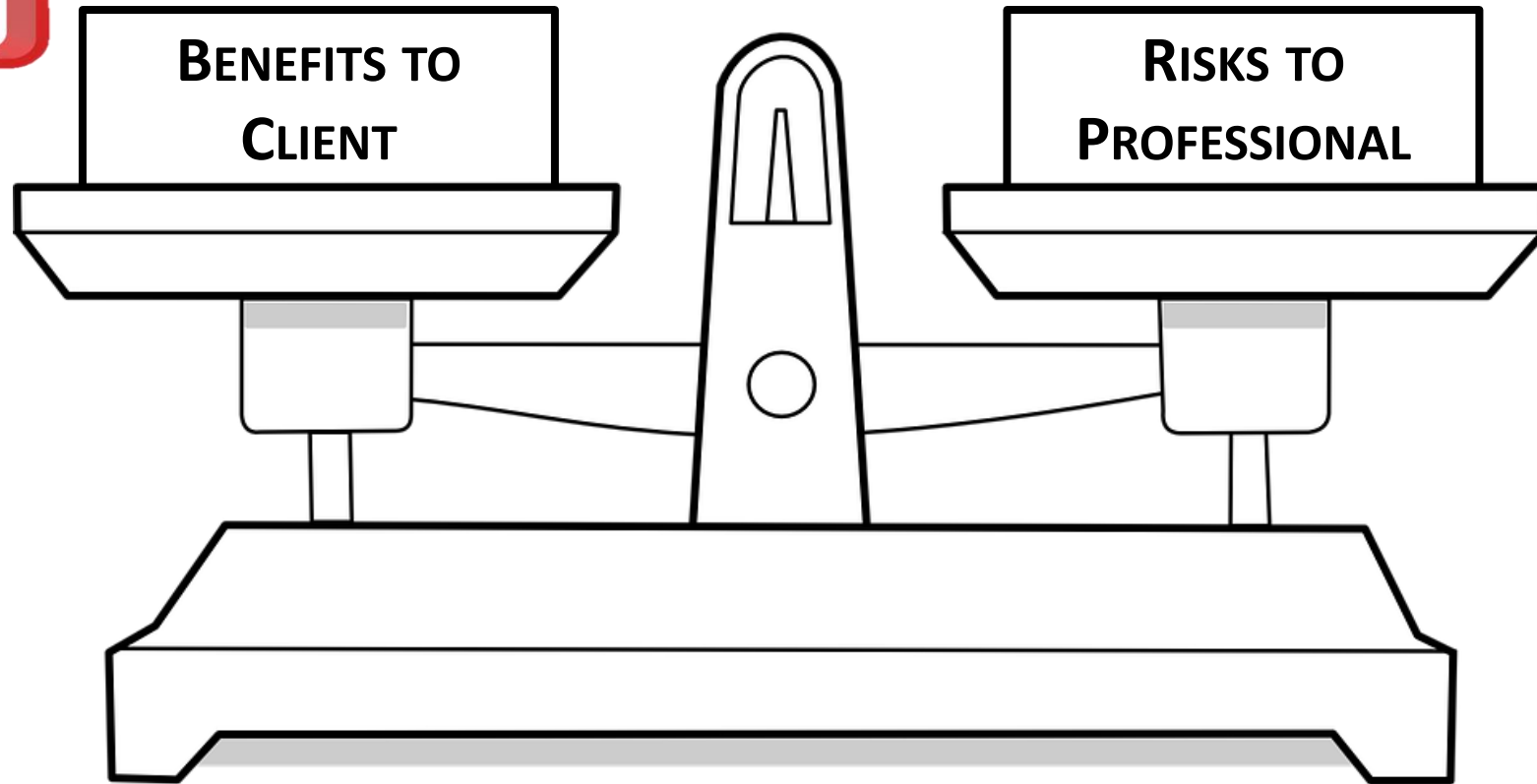
# Disclosures/Conflicts of Interest

Aside from my affiliation with The Trust, I have no conflicts of interest to disclose.

# Learning Objectives

1. Describe three general risk management tools.
2. Identify three features of high-conflict parents.
3. Identify three risk management strategies when working with children of high-conflict parents.

# WHAT IS RISK MANAGEMENT?



# WHAT IS RISK MANAGEMENT?

## General Areas of Risk:

- Client Risk Factors
- Situational Risk Factors
- Clinician Risk Factors

## General Risk Management Tools:

- Informed Consent
- Documentation
- Consultation



# FEATURES OF HIGH-CONFLICT PARENTS (HCP)

Amundson and Lux (2016)

- Communication deficits
- Problems with making joint decisions about the children
- Regularly critical of each other's parenting practices
- Presence of distrust and ongoing allegations about the other parent
- Hostility
- “Failed” interventions through mediation, counselling, etc.
- Drawn-out or frequent litigation to regulate day-to-day care
- Restraining orders and/or no-contact orders



# Common Terms in Custody Arrangements (Mossman & Weston, 2008)

Custody arrangement	The specified times each parent will spend with a minor child and which parent(s) can make major decisions about a child's welfare
Legal custody	A parent's right to make major decisions about a child's welfare, including medical care
Visitation	The child's means of maintaining contact with a noncustodial parent
Physical custody	Who has physical possession of the child at a particular time, such as during visitation
Sole legal custody	A custody arrangement in which only one parent retains the right to make major decisions for the child
Joint legal custody	A custody arrangement in which both parents retain the right to make major decisions affecting the child
Modification of custody	A legal process in which a court changes a previous custody order



# RISK MANAGEMENT WITH HCP

- Clearly identify the client(s)
- Be specific about the services being sought as well as the desired or possible outcomes
- Specifically detail your role and any limitations that accompany the role
- Determine the current legal status (e.g., custody, parenting time, legal decision making) of each parent
- Provide clear fee arrangements and obtain agreement

# RISK MANAGEMENT WITH HCP

- Do not get involved in HCP disputes
- Do not allow the urgency of HCP situations and our desire to be helpful push us beyond our role and competency boundaries or cause us to make rash decisions
- Remain receptive yet skeptical in response to allegations you hear, understanding that you are very likely not getting the “whole picture”



# RISK MANAGEMENT POLICIES

- Detail what your state law says about parental access to the minor's records and document agreement of parent(s)
- Enforce a policy about consulting with and involvement of non-presenting parent
- Adopt a policy of transparent and equal communication between parents who have legal decision making
- Clearly establish policies regarding a minor's privacy (e.g., under what circumstances information provided by the minor will be shared)

# HCP SCENARIO

Mr. Denalis



Leeya



Ms. Denalis



# VIGNETTE

Ms. Denalis



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Dr. Hurst



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Ms. Denalis





# ISSUE SPOTTING: ETHICAL ISSUES

- Clinical and ethical issues?
  - Relationships
  - Conflict of interest
  - Confidentiality concerns
- Legal issues?
  - Need for a response
  - Privilege
- Risk management issues?
  - Informed consent content
  - Mitigation options



# **APA (2017): ETHICS CODE**

**3.04 Avoiding Harm**

**3.05 Multiple Relationships**

**4.02 Discussing the Limits of Confidentiality**

**4.05 Disclosures**

**6.04 Fee and Financial Arrangements**

**10.01 Informed Consent to Therapy**

**10.02 Therapy Involving Couples or Families**

**10.09 Interruption of Therapy**

**10.10 Terminating Therapy**

# APA (2017): ETHICS CODE

## 10.01 Informed Consent to Therapy

(a) When obtaining informed consent to therapy as required in Standard 3.10, Informed Consent, psychologists inform clients/patients ***as early as is feasible*** in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties, and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers.

# APA (2017): ETHICS CODE

## 10.02 Therapy Involving Couples or Families

(a) When psychologists agree to provide services to several persons who have a relationship (such as spouses, significant others, or parents and children), they take reasonable steps to clarify at the outset

1. which of the individuals are patients and clients, and
2. the relationship the psychologist will have with each person. This clarification includes the psychologist's role and the probable uses of the service provided or the information obtained.

# APA (2017): ETHICS CODE

## 10.02 Therapy Involving Couples or Families

(b) If it becomes apparent that psychologists may be called upon to perform potentially conflicting roles (such as family therapist and then witness for one party in a divorce proceeding), psychologists take reasonable steps to clarify, and modify, or withdraw from, roles appropriately.

# APA (2017): ETHICS CODE

## 10.09 Interruption of Therapy

When entering into employment or contractual relationships, psychologists make reasonable efforts to provide for orderly and appropriate resolution of responsibility for client/patient care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the client/patient.

# APA (2017): ETHICS CODE

## 10.10 Terminating Therapy

(a) Psychologists terminate therapy when it becomes reasonably clear that the client/patient *no longer needs the service, is not likely to benefit, or is being harmed by continued service* [emphasis added].

(b) Psychologists may terminate therapy when threatened or otherwise endangered by the client/patient or another person with whom the client/patient has a relationship.

(c) Except where precluded by the actions of clients/patients or third-party payors, prior to termination psychologists provide pretermination counseling and suggest alternative service providers as appropriate.

# CLINICAL ISSUES

- Do not lose sight of the interests of your client/patient
- Involve both parents as a standard whenever possible
- Strive to meet the elusive goal of neutrality
- Limit-setting
- Consider the guardian ad litem (GAL)
- Licensing board perspective



# LEGAL ISSUES: ACCESS TO RECORDS

- HIPAA
  - Defers to state law for parental access exceptions, unless the following provision applies:
- Psychologist may elect to not treat a parent as a legal representative if they have reasonable belief that:
  - Child may be/has been subject to abuse or...
  - Doing so would endanger child and...
  - Psychologist decides, through exercise of professional judgment, it is not in child's best interest to do so.

# LEGAL ISSUES: ACCESS TO RECORDS

- Considerable variance in state laws, so be sure to check.
- Most state laws provide equal access to records to both parents, even if one is non-custodial, unless a court has officially indicated otherwise
- Some states have created a clinical exception that allows therapist to assert confidentiality if they believe that release of information is damaging to a child
- If there is a GAL, a psychologist may request that they protect the child's confidentiality

# LEGAL ISSUES: INFORMED CONSENT

- The agreement represents a contract between the parents and psychologist (or, in some instances, the minor) limiting access rights
- Stipulated agreement
  - HIPAA supports this contract as binding in many but not all states (e.g., New York State makes such agreements void)
  - A court may not honor depending on state law
- Resource
  - The Trust Revised Consent Form with Child/Adolescent Addendum

# SAMPLE INFORMED CONSENT LANGUAGE

## SAMPLE INFORMED CONSENT FORM

### INFORMATION ABOUT THE SAMPLE PSYCHOTHERAPIST-ADULT PATIENT CONTRACT (WITH ADDENDUM FOR CHILD/ADOLESCENT PATIENT)

Joe Scropo, Ph.D., J.D. | Daniel O. Taube, J.D., Ph.D. | Amanda D. Zelechowski, J.D., Ph.D., ABPP

*Note to clinicians: This sample psychotherapist-patient contract has been prepared for two reasons. First, it allows you to comply with the requirement that informed consent must be obtained from your patients (Ethical Principles of Psychologists and Code of Conduct, 2017, Standards 10.02, 4.02). Second, it allows you to establish a potentially legally enforceable business agreement with the patient and helps minimize the risk that business issues may become the bases for malpractice suits and ethics or licensing board complaints. Most commentators suggest that full informed consent is both ethically necessary and a good risk management strategy.*

**[www.trustinsurance.com/Resources/Download-Documents](http://www.trustinsurance.com/Resources/Download-Documents)**

# SAMPLE INFORMED CONSENT LANGUAGE

## Parent Authorization for Minor's Mental Health Treatment

In order to authorize mental health treatment for your child, you must have either sole or joint legal custody of your child. If you are separated or divorced from the other parent of your child, please notify me immediately. I will ask you to provide me with a copy of the most recent custody decree that establishes custody rights of you and the other parent or otherwise demonstrates that you have the right to authorize treatment for your child.

If you are separated or divorced from the child's other parent, please be aware that it is my policy to notify the other parent that I am meeting with your child. I believe it is important that all parents have the right to know, unless there are truly exceptional circumstances, that their child is receiving mental health evaluation or treatment.

One risk of child therapy involves disagreement among parents and/or disagreement between parents and the therapist regarding the child's treatment. If such disagreements occur, I will strive to listen carefully so that I can understand your perspectives and fully explain my perspective. We can resolve such disagreements or we can agree to disagree, so long as this enables your child's therapeutic progress. Ultimately, parents decide whether therapy will continue. If either parent decides that therapy should end, I will honor that decision, unless there are extraordinary circumstances. However, in most cases, I will ask that you allow me the option of having a few closing sessions with your child to appropriately end the treatment relationship.



# DISCLOSURE OF TREATMENT INFORMATION

[www.trustinsurance.com/Resources/Download-Documents](http://www.trustinsurance.com/Resources/Download-Documents)

## Disclosure of Minor's Treatment Information to Parents

Therapy is most effective when a trusting relationship exists between the psychologist and the patient. Privacy is especially important in earning and keeping that trust. As a result, it is important for children to have a “zone of privacy” where children feel free to discuss personal matters without fear that their thoughts and feelings will be immediately communicated to their parents. This is particularly true for adolescents who are naturally developing a greater sense of independence and autonomy.

It is my policy to provide you with general information about your child's treatment, but NOT to share specific information your child has disclosed to me without your child's agreement. This includes activities and behavior that you would not approve of — or might be upset by — but that do not put your child at risk of serious and immediate harm. However, if your child's risk-taking behavior becomes more serious, then I will need to use my professional judgment to decide whether your child is in serious and immediate danger of harm. If I feel that your child is in such danger, I will communicate this information to you.

# DISCLOSURE OF TREATMENT RECORDS

[www.trustinsurance.com/Resources/Download-Documents](http://www.trustinsurance.com/Resources/Download-Documents)

## Disclosure of Minor's Treatment Records to Parents

Although the laws of [this State] may give parents the right to see any written records I keep about your child's treatment, by signing this agreement, you are agreeing that your child or teen should have a "zone of privacy" in their meetings with me, and you agree not to request access to your child's written treatment records.



# INFORMATION/RECORDS IN CUSTODY LITIGATION

[www.trustinsurance.com/Resources/Download-Documents](http://www.trustinsurance.com/Resources/Download-Documents)

## Parent/Guardian Agreement Not to Use Minor's Therapy Information/Records in Custody Litigation

When a family is in conflict, particularly conflict due to parental separation or divorce, it is very difficult for everyone, particularly for children. Although my responsibility to your child may require my helping to address conflicts between the child's parents, my role will be strictly limited to providing treatment to your child. You agree that in any child custody/visitation proceedings, neither of you will seek to subpoena my records or ask me to testify in court, whether in person or by affidavit, or to provide letters or documentation expressing my opinion about parental fitness or custody/visitation arrangements.

Please note that your agreement may not prevent a judge from requiring my testimony, even though I will not do so unless legally compelled. If I am required to testify, I am ethically bound not to give my opinion about either parent's custody, visitation suitability, or fitness. If the court appoints a custody evaluator, guardian *ad litem*, or parenting coordinator, I will provide information as needed, if appropriate releases are signed or a court order is provided, but I will not make any recommendation about the final decision(s). Furthermore, if I am required to appear as a witness or to otherwise perform work related to any legal matter, the party responsible for my participation agrees to reimburse me at the rate of \$XXX per hour for time spent traveling, speaking with attorneys, reviewing and preparing documents, testifying, being in attendance, and any other case-related costs.

# RISK MANAGEMENT: RECORDS REQUESTS

If the law does not permit waiver of access or the access would not likely be harmful to the child or adolescent or the treatment...

- Providing equal access to parents is a prudent approach (a summary can be offered, if the parents agree)
- Inform both, when a request is made, that both will have access and that when a request for records is made, the other parent will be informed and offered the same access

# VIGNETTE

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# Q&A With Dr. Martinez



- Drs. Elchert and Martin will read select questions that were submitted via the Q&A feature throughout the presentation.
- Due to time constraints, we will not be able to address every question asked.

# References

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