Legal and Ethical Tips for Risk Reduction and Practice Effectiveness

Robert L. Moore, EdD, PhD
ACS, NCC, LPC-MHSP
Liberty University
rlmoore7@liberty.edu

June 14, 2024
TLPCA 2024 Counseling and Therapy Summit

Presenter Bio

Dr. Moore has practiced for more than 30 years and has conducted evaluations on high-risk client populations (e.g., sex offenders, homicidal) in school systems, correctional facilities, and private practice. In addition to his faculty responsibilities, he is currently a consultant with Shelton Forensics and a school district and is developing a series of homicide risk assessment inventories. He has conducted more than 700 adolescent homicide risk evaluations over the 25 years.

Objectives

1. **This session will review the importance of addressing homicide/harm assessment, prevention, and reduction in their practice.**
2. **This session will identify practical strategies and interventions for assessing and addressing homicide and harm in counseling practice.**
3. **This session will explore evidence-based approaches for preventing violence and reducing risk and liability in counseling settings.**

Introductions

Participants

- Name
- City/Area from
- Name of agency & client population focus
- Licensure type and length of post-licensure experience

Poll

- Complete the anonymous handout and return to the presenter
- Identify a data manager
- Discuss findings
- What are the implications?

Presentation Overview

While some attention is given to suicide assessment and prevention in counselor education and continuing education, insufficient attention is given to homicide/harm assessment, prevention, and reduction. This session will review the TN Code and the ACA Code of Ethics, provide research findings, and review practical ways to improve practice effectiveness while reducing risk/liability by ensuring that specific areas are addressed in counseling.

Objective #1

This session will review the importance of addressing homicide/harm assessment, prevention, and reduction in their practice.

TN Board of LPC, LMFT, and LPT

- Statutes are proposed and made law by the Tennessee State General Assembly (Legislature). The Board, following specific notice requirements and hearings, adopts rules. Both have the force of law and may be used in the regulation of a profession. The statutes pertaining to this Board are found at T.C.A. 63-1 (Division of Health Related Boards) and T.C.A. 63-22 (Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists).

Review of Tennessee Code Annotated: Key Issues

- 63-22-107 (f): LPC defined
- 63-22-110 (a, b, c): Powers of the Board
- 63-22-113: Non-limiting practice
- 63-22-114: Confidentiality (attorney-client) with caveat about disclosure
- 63-22-117: Prohibited Activities: Helping Students Avoid Pitfalls: Review all.
- 63-22-120: Requirements for Licensure (minimal)
- 63-22-181: Coaching students/post-masters through temporary licenses

Assessment: A Powerful Clinical Tool

For some/most/all LPCs, assessment may be equated with projective personality appraisal or intelligence testing, which is best left to psychologists. According to the Tennessee Code Annotated/Rules, this would be an accurate understanding of the scope of practice for LPC-MHSP.

However, outside of these two specific areas (including not writing reports entitled "Psychological Report." giving an IQ score, etc.), the scope of practice related to assessment is broader than LPCs may realize.

Counseling Defined

- 63-22-301. Part definitions.
- For purposes of this part, "counseling or therapy services" means assisting an individual, who is seeking or engaged in the counseling relationship in a private practice setting, in a manner intended to facilitate normal human growth and development, using a combination of mental health and human development principles, methods, and techniques, to achieve mental, emotional, physical, social, moral, educational, spiritual, or career development and adjustment throughout the individual's life span.

Risk Management

- Disclaimer: Cases and statistics will be presented. No specific names will be used. The information presented was gathered by the presenter and is subject to verification, modification, and clarification. The information presented is for educational purposes and is not intended to be legal advice. Please consult with your attorney and/or the attorney with your professional liability carrier if you have concerns.

Tennessee Disciplinary Action Reports (DAR) 3-year period

- **STATE of TN: BOARD OF LICENSED PROFESSIONAL COUNSELORS, LICENSED MARITAL AND FAMILY THERAPISTS, AND CLINICAL PASTORAL THERAPISTS**
- **Periodically, they submit a report to the Health Related Boards regarding actions taken by the Board. This monthly report is PUBLICLY available (and assumed to be in perpetuity).**
  - **Name**
  - **Violation**
  - **Action**

Board DAR Examples

- Adverse Actions are on your licensed provider profile (https://apps.health.tn.gov/Licensure/)
- Non-payment of student loans
- Failure to maintain sufficient continuing education credits
- Violation of professional code of ethics to avoid harm and maintain boundaries. Engaging in professional misconduct, unethical or unprofessional conduct, including but not limited to, willful acts, negligence and conduct likely to deceive, defraud or harm the public or engaged in such conduct.

Examples cont.

- Guilty of working while under the influence. Unable to perform required crisis intervention duties and failure of urine drug screen.
- Guilty of disclosing confidential information through public social media. Failure to protect the confidential information of prospective and current clients. Guilty of disclosing information without appropriate consent or without sound legal or ethical justification.
- Failed to timely renew license and practiced on an expired license

Examples cont.

- Guilty of engaging in professional misconduct regarding sexual and/or romantic interaction or relationship with a client.
- Guilty of engaging in an inappropriate relationship with a patient. Engaging in professional misconduct, unethical or unprofessional conduct, including but not limited to, willful acts, negligence and conduct likely to deceive, defraud or harm the public or engaged in such conduct. The certified professional counselor and licensed professional counselor and anyone under his supervision shall conduct their professional practice in

Examples cont.

- Conformity with the legal, ethical and professional standards promulgated by the Board under its current statutes and rules and regulations.
- Violating the rules and regulations adopted by the board; and engaging in professional misconduct, unethical or unprofessional conduct, including but not limited to, willful acts, negligence and conduct likely to deceive, defraud or harm the public or engaged in such conduct.
- Guilty of violating the rules and regulations adopted by the board.

KEY Example cont.

- Guilty of engaging in unprofessional conduct. Giving a professional opinion regarding mental status without having a counselor-patient relationship and not having performed an evaluation.
- Mental status? Evaluation?

Suicidal vs. Homicidal Risk: There are Differences

- Pragmatic Question? If there was a raising public awareness event for the prevention of suicide, would you support it? Poll audience
- What about homicide prevention? How many people would attend an event like that? Poll audience
- Why are the inhibitors associated with homicide awareness?
  - Shame
  - Guilt
  - Fear

Suicidal vs. Homicidal Risk cont.

- What about perpetrators of or at-risk people for committing domestic violence?
- What about perpetrators of or at-risk people for sexual assault?
- What about the idea posed by Patrick Carnes (1983) from Out of the Shadows: Understanding Sexual Addiction
- How do we make it "OK" to seek help when troubled in an area/s so fraught with shame, guilt, and fear?

Suicidal vs. Homicidal Risk cont.

- What legal requirements or statutes/rules do we need change?
  - If you attempt suicide, you may be hospitalized, but if you attempt homicide, you may be incarcerated.
  - If you complete suicide, there is a loss of one person. If you are homicidal and complete a rampage/mass killing, there are multiple victims/fatalities.
  - Could there be a provisional waiver of legal responsibility for "prior acts" if seeking counseling? How do we get them out of the shadows? Would sociopaths abuse this provision? Is there a difference between past homicidality and current ideation?

Legal Questions, cont.

- Can we, or should there be mandatory counseling for those who screen out as being high-risk for homicide?
- What would trigger the mandatory counseling? Finding a manifesto, making threats on social media, etc.?
- What therapists want to be identified as certified to treat homicidal clients?

ACA Code of Ethics (2014)

- B.2.a. Serious and Foreseeable Harm and Legal Requirements
  - The general requirement that counselors keep information confidential does not apply when disclosure is required to protect clients or identifed others from serious and foreseeable harm or when legal requirements demand that confidential information must be revealed. Counselors consult with other professionals when in doubt as to the validity of an exception. Additional considerations apply when addressing end-of-life issues.

TN: Duty to Warn

- HB 7058 (Cochran)
- SB 7008 (Haile)
  - Mental Illness - As introduced, expands the statutory duty that qualified mental health professionals and licensed behavior analysts have to notify potential victims and law enforcement of an actual threat of bodily harm against a clearly identified victim made by a person receiving mental health services to apply to additional healthcare providers and include credible threats without a clearly identifiable victim. - Amends TCA Title 33, Chapter 3, Part 2.

- Current TCA 33/22/2, requires several steps by mental health service provider. Do the new bills ONLY require reporting the threat to law enforcement to discharge the duty?
- Must be protections for care providers who have patients that become homicidal: Dr. Heather Bazzel, Columbia, TN, physician, was gunned down in Belk parking lot by a former patient (Miles Scribner, previous hx of stalking)

Objective #2

This session will identify practical strategies and interventions for assessing and addressing homicide and harm in counseling practice.

Homicidal Risk and Mental Status: More than One Question is Needed

- How much do we probe for homicidal risk?
- Many times, the phrase "or thought about hurting someone else" is quickly nested in the S/H ideation question without probing "Attempt" to hurt others.
- TOUGH QUESTION TO ASK AND ANSWER:
  - Have you ever hit/hurt/assaulted someone?
  - What are the legal implications?
    - Can they still be charged?
    - Is it mandatory reporting?
  - What about Domestic Violence?

MSE/Session Prompts

- Soft Homicide Questions (must be open-ended)
  - Tell me about how you manage your anger
  - What do you experience when angry?
  - What thoughts do you have when angry?
  - When you've been hurt by somebody, tell me about your thoughts and ideas you had afterwards (e.g., getting them back, grudges, etc.)
  - Males: Tell me about any abuse you experienced
  - Who in your life disrespects you?
  - Who acts like they are too good for you?

MSE/Session Prompts

- Soft Homicide Questions (can be closed-ended)
  - Do your feelings get easily hurt when somebody makes fun of you?
  - Do you tend to hold grudges? If so, tell me about it.
  - Have people said you are hypersensitive?
  - Has your job status changed lately (demoted, fired, loss of income, etc.)?
  - Tell me about a group(s) of people that you can't stand—look over the list (e.g., Blacks, Whites, Hispanics, Gays/Lesbians, Muslims, MAGA–supporters, democrats, One percenter (rich people), teachers, authority (e.g., enforcement, bosses, etc.)..

MSE/Session Prompts

- Soft Homicide Questions (can be closed-ended)
  - What about law enforcement, businesses, and/or the government? Do you think they are out to suppress or harm people like you? If so, tell me about it.
  - Depression questions (start with anhedonia)
    - Do you find yourself not doing what you used to like to do?
  - Relationship questions
    - Has there been a change in your relationship status lately
      - A relationship ended
      - A relationship is declining
      - There is a lack of relationship (see next slide)

Moore Theory of Homicidality: A Developmental Perspective

- Perpetrators develop over time
- There were several off-ramps but were not taken
- Becomes increasingly delusional
- Isolates
- Becomes unable to handle ambiguity or difference of opinion
- Feels justified
- Objectifies potential victims

Theory of Homicidality cont.

Reductionist View

- Poor single predictors
  - Suicidal
  - Narcissistic
  - Depressed
  - Neurodiverse
  - Age
  - Environment
  - Abuse/trauma history
  - Racism/Oppression
  - Playing violent video games

Theory of Homicidality cont.

- Better single predictors
  - Gender: Male
  - Criminal History
  - Socially and Relationally isolated (outside of immediate family and like-minded friends)
  - Delusional: Vindictive
- Best known single predictors
  - Making a threat of harm to others (verbal or written)
  - Family/friends have heard them make threatening comments.

Theory of Homicidality cont.

Multi-variant View

- Identifying those with the greatest risk requires selecting from a list of approximately 60 known single variables for assessment and surveillance.
- No one mass murderer has possessed all 60 variables. Discovering the combination of variables that have the most predictive power of risk (not actually carrying out the incident) is the key. The combination of variables has to be empirically supported and empirically identified. Who can best determine that?

Theory of Homicidality cont.

Those who work with clients regularly.

Theory of homicide cont.

- Although not mutually exclusive, and with the understanding that one type/category of homicidal individual can move from one category to the other, the following appear to exist:
- **The Planner** (similar to a serial killer)
  - Provides warning signs
  - Lack of Oxytocin and Serotonin levels
  - Seeks Dopamine bump (superiority/grandiose)
  - Lack of Pro-social, activities activities
  - Is not remorseful after the act (adolescent premeditated killers are the exception, although there is not a large sample size)
  - Foment period is typically more than week and up to several months

Proposed Categories

- **The Reactor** (impulsive/emotionally overwhelmed)
  - Likely overtaken/triggered: Limbic-Amygdala, Norepinephrine (NE)
  - Latent hostility, poor coping skills, violence observed
  - Possibly Opposition-Defiant as child/adolescent
  - Distressed, typically gets tunnel vision as to no options
  - Is typically remorseful after the act
  - Foment period is typically less than 24 hours

Sub-Category cont.

Involuntary Celibates (Incels)

Sub-type of The Planner

- Heterosexual males
- Blame woman for having too much power, and this power ruins their lives
- Recent notables
  - Cole Carini (bomb maker, VA, W/M)
  - Armando Hernandez, Jr. (mall shooter, Phoenix, AZ, H-A/M)
  - Eliot Roger (six fatalities, Vista, CA, Asian-English/M)
  - Scott Beierle (Hot yoga, Tallahassee, FL, 2 fatalities, W/M)
- More information
- https://www.cambridge.org/core/journals/bjpsych-advances/article/incels-violence-and-mental-disorder-a-narrative-review-with-recommendations-for-best-practice-in-risk-assessment-and-clinical-intervention/6A934637D21AEE4C1D90FAF5FB63D769

Objective #3

- **This session will explore evidence-based approaches for preventing violence and reducing risk and liability in counseling settings.**

Theory + Empirical Supported Approaches and Activities

- Theoretical Assumptions about Intervention
  - Intervention and Prevention can occur at the therapist-level to the community level
  - No "one-size fits all"—interventions need to match specifically identified risk factors
  - Problem—Antidote (examples)
    - Narcissism/Entitled—Altruism, spirituality exposure, empathy training
    - Hatred—Acts of Kindness
    - Delusion—Cognitive Behavior Therapy
    - Threat—Takes responsibility, Restorative Justice
    - Amorality—Moral education

Approaches cont.

- **Social-Emotional Learning (SEL) Programs**: These programs are often implemented in schools and focus on developing students' social and emotional skills, including empathy, perspective-taking, and cooperation. Research has shown that participation in SEL programs can lead to increased prosocial behavior, including altruistic acts.
- **Empathy Training**: Interventions aimed at enhancing empathy have been shown to increase altruistic behavior. These interventions may involve perspective-taking exercises, role-playing scenarios, or mindfulness practices designed to cultivate empathy towards others.

Approaches cont.

- **Volunteerism Programs**: Engaging in volunteer activities has been associated with increased altruistic behavior and well-being. Studies have shown that participation in volunteer programs can lead to greater empathy, compassion, and altruistic acts towards others.
- **Random Acts of Kindness Interventions**: Some studies have examined the effects of interventions that encourage individuals to perform random acts of kindness towards others. These interventions often involve keeping track of kind acts performed and reflecting on the positive impact of these actions. Research has shown that engaging in acts of kindness can lead to increased feelings of happiness and altruism.

Approaches cont.

- **Cognitive-Behavioral Interventions**: Cognitive-behavioral techniques, such as cognitive restructuring and behavioral rehearsal, can be used to challenge unhelpful thoughts and promote prosocial behavior. These interventions may target beliefs that inhibit altruistic behavior, such as concerns about social approval or perceived costs of helping others.
- **Community-Based Interventions**: Interventions implemented at the community level, such as neighborhood clean-up projects or community service events, can foster a sense of social connection and collective responsibility, leading to increased altruistic behavior among participants.

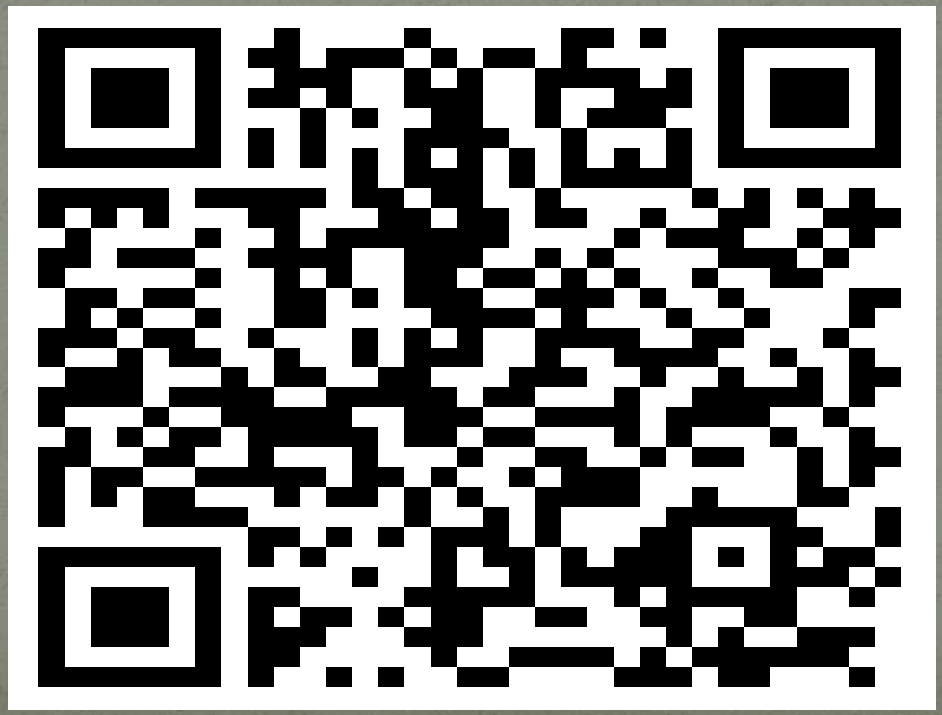
Session Summary

- There are laws and rules that provide our scope of practice, along with responsibilities for ensuring safety.
- There are specific variables to assess to determine homicide risk potential.
- We can draw upon research to give direction for intervention and subsequent risk reduction in our practice and for the broader community.

How I can help!! Your Opinion is Critically Needed

* Complete the survey and get a $10 Amazon card—leave email in the last text box

**Send QR to a licensed friend and ask them to complete it—it only takes about 13-15 minutes



Debrief the Topic: Hopeful Thoughts

- Just like with suicide assessment, intervention, and prevention, we use our best techniques to reduce homicidal risk.
- While we may never know whether our efforts derailed a would-be assailant, we are comforted knowing that we did all we could using good clinical judgment, assessment, and intervention.
- More research is being conducted to equip providers with the tools necessary to more accurately assess and prevent the next shooting/mass casualty event.

References

- Anderson, C. A., & Bushman, B. J. (2002). Human aggression. *Annual Review of Psychology, 53*(1), 27-51.
- Baez, J. C., & Bertone, A. (2020). An exploratory study of intimate partner homicide suicide: Characteristics of the perpetrator, victim, and the relationship. *Journal of Interpersonal Violence, 35*(13-14), 2864-2887.
- Beauregard, E., Stone, T., Proulx, J., & Michaud, P. (2014). Sexual homicide: A synthesis of the literature. *Aggression and Violent Behavior, 19*(3), 288-296.
- Chan, H. C. O., Beauregard, E., Myers, W. C., & Ross, R. R. (2016). The role of psychopathy and sexuality in a female serial killer. *Journal of Forensic Sciences, 61*(4), 1066-1070.
- Daly, M., & Wilson, M. (1988). Evolutionary social psychology and family homicide. *Science, 242*(4878), 519-524.
- Daly, M., & Wilson, M. (2011). Homicide. *Wiley Interdisciplinary Reviews: Cognitive Science, 2*(5), 595-613.

References

- Farrington, D. P. (2003). Developmental and life-course criminology: Key theoretical and empirical issues. *The Australian and New Zealand Journal of Criminology, 36*(3), 287-302.
- Ferraro, K. J., & Harris, K. L. (2017). Investigating homicide victimization within communities: Disentangling the effects of collective efficacy and social disorganization. *Journal of Interpersonal Violence, 32*(5), 653-676.
- Fox, J. A., & Levin, J. (2001). Multiple homicide: Patterns of serial and mass murder. *Crime and Justice, 28*(1), 443-501.
- Gottfredson, M. R., & Hirschi, T. (1990). *A General theory of crime*. Stanford University Press.
- Harris, G. T., & Hilton, N. Z. (2016). *Homicide risk assessment: A practical guide for clinicians*. Wiley Online Library.
- Monahan, J., Steadman, H. J., Silver, E., Appelbaum, P. S., Robbins, P. C., Mulvey, E. P., ... & Banks, S. (2001). Rethinking risk assessment: The MacArthur study of mental disorder and violence. *Oxford University Press*.

References

- Kivisto, A. J., & Fedina, L. (2020). Perpetrator, victim, and incident characteristics of sexual homicide. *Aggression and Violent Behavior, 54*, 101367.
- Raine, A. (1993). *The psychopathology of crime: Criminal behavior as a clinical disorder*. Academic Press.
- Raine, A., Venables, P. H., & Williams, M. (2019). Better brains, worse crimes? The relationship between brain abnormalities, psychopathy, and crime in a high-risk male population. *Journal of Research in Crime and Delinquency, 56*(2), 227-256.
- Wolfgang, M. E., & Ferracuti, F. (1967). The subculture of violence: Towards an integrated theory in criminology. *Journal of Criminal Law, Criminology, and Police Science, 58*(2), 211-222.