MINNESOTA PSYCHIATRIC SOCIETY
ETHICS BREAKOUT MATERIALS

For each scenario, consider:

1. **What ethical issues do you see?**
2. **What legal issues do you see?**
3. **Are there conflicting ethical principles?**
4. **What additional information would you want to have to evaluate the ethical or legal issues?**

First Breakout Session – Technology in the Work Place

Dr. Mintz is a hip psychiatrist who is into all of the latest gadgets and technology because he believes that it will help his patients receive better health care. He has several new things he is trying out with his patients. Before he starts, he tells them that they need to participate because it makes it easier for him and the other doctors the patient sees to deliver quality health care and will really make a difference in the outcomes. He will not provide care to patients who will not participate.

First, Dr. Mintz provides each patient with a bracelet, much like a "Fit Bit" but this bracelet records the movements of the patient, the patient's heart rate and blood pressure, calories burned, and sleep patterns and sends the data directly to Dr. Mintz's iPad every hour on the hour. Dr. Mintz can tell from this data whether his patient is active, or is being a couch potato, he can monitor whether the patient sleeps enough or too much, and keep track of whether the medications he has the patient on have impact on the patient's heart rate and blood pressure. Dr. Mintz reviews the data before the patient's next appointment and discusses the results with the patient.

Mary, a patient of Dr. Mintz with major depressive disorder reported at her appointment that she had been exercising fairly regularly as he suggested and was on a strict schedule of sleep for 8 hours and no more per night. She said she does not sleep during the day. However, the data Dr. Mintz collected contradicted this and in fact showed that Mary had not moved any significant distance (or even likely out of her house) in the past month and that she sleeps most of the day away, which means she was not going to work. At her appointment, Dr. Mintz told Mary that she was lying and that he would give her one more chance to "fess up" because he could not treat a patient who did not trust him enough to tell him the truth. He told her to think about it and get back to him before his next appointment. When the 30 minute appointment was over, he gave her a bill reflecting 99213, $100 and 908XX (45 minutes of psychotherapy), $125 which he knew she would submit to her insurance company for reimbursement. He is out of network, so Mary paid him in cash $225 for the visit.

Mary also has been diagnosed with alcoholism. Dr. Mintz and she became friends on Instagram and Dr. Mintz encouraged her to take photos of her surroundings and send them to him with a message about what she was thinking whenever she wanted to have a drink. He thought this would be helpful to their therapy because it could allow them to understand what circumstances and triggers cause her to desire alcohol.

Mary was at her ex-husband's wedding sitting at a table with several widows, all of whom were over 80 years old. She instagrammed Dr. Mintz from the reception at 11 PM on a Saturday evening and said, "I guess I am old and forgotten." Dr. Mintz saw this and did not reply, but he did make a mental note to talk to her about it when he saw her next. Around 2 AM, Mary sent another Instagram – this time she was sitting with a handsome young man sharing what looked like a Martini. In the picture, she said "I am finally relaxing and enjoying myself." Dr. Mintz did not see this because he was asleep. In the morning Dr. Mintz noted that he received a message from her, but it was Sunday and that is the day he spends with his family, so he would look at the Instagram later.

On Monday, Dr. Mintz confirmed that Mary was scheduled to visit on Friday, so he decided not to contact her before then. Mary never came in on Friday because she had been arrested for drunk driving after having caused an accident.

Dr. Mintz also does group therapy for alcoholism and Mary participates in that group. The group uses Facebook posts to communicate when not in session. Dr. Mintz checked the box on his Facebook account that allows him to be logged in whenever his computer is running or whenever he brings it up on his phone or iPad. After being released from jail on bail, Mary posted to the site "I cannot believe how I have embarrassed myself and my family but my mother did not need to be so harsh on me. I am going to kill her." Dr. Mintz viewed this as not a threat but an expression; he did not really believe she would kill her mother. Later in the day, another patient posted in response "why take it out on your mother, since you are the one who made all the mistakes." Mary responded, "you are right, I don't deserve to live and will fix that today." Dr. Mintz saw this and thought Mary was making progress, having admitted that it was not her mother's fault that she had an illness.

At 8PM that evening the police knocked on Dr. Mintz's door to let him know that Mary had swallowed an entire 90-day supply of sleeping pills that he had prescribed and died. Dr. Mintz looked all around for his iPad and iPhone to see what was going on, and remembered that his 14 year old son must have them because he borrows them every night to do homework and listen to music.

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<u>Second Breakout Session – Changing Practices in the 21st Century</u>

Scenario 1:

Deb is a psychiatrist reviewer for We Deny Care ("WDC") insurance company. Her contract with WDC states that her job is to apply the rules as determined by the company and to review, and approve of or deny patient benefits. There are several rules that the company has that Deb believes are below the standard of care for a practicing psychiatrist; for example, the Company will not approve residential treatment for eating disorders and says in their benefit offerings that residential care is excluded. Deb reviews many situations where residential care is

The plan also requires all psychiatric visits to get prior authorization (except in emergencies where retroactive review is ok). A bunch of psychiatrists sued WDC claiming that requiring prior authorization of all psychiatric services while not requiring it for all other medical services violates the federal and state Mental Health Parity Acts. WDC lost that case and the court said the practice violated Mental Health Parity. WDC did not change its rules. Deb went to her supervisor and the supervisor's supervisor and said that she thought they were in violation of the court's order by continuing the prior authorization practice. WDC told Deb that their lawyers said it was fine. So Deb continued denying psychiatric claims (even if they were medically necessary) if the patient did not follow the prior authorization rules.

**************STOP – DISCUSS QUESTIONS**************

Scenario 2:

After Deb got fired for pushing WDC to stop violating the Mental Health Parity Act, she joined the army and went to work for the Department of Defense (DOD). DOD sent her to a prison where the DOD held suspected terrorists. Deb was asked to watch interrogations and tell the interrogators when the prisoner seemed to be breaking down and what tactics to use to make him talk. She was also asked to medicate patients so that they would be more inclined to tell the truth and to suggest positions in which the prisoners could be placed that would be just uncomfortable enough to make them talk. On one occasion, one of her colleagues even pretended that he was there to provide medical help to the prisoner, gained his trust, got some information and shared it with the interrogators. Deb was very uncomfortable with this and asked her supervisors for a transfer. The request was declined. Her supervisor told her to follow the orders she was given and don't ask any questions.

**************STOP – DISCUSS QUESTIONS**************

Scenario 3:

Deb was discharged from the military and decided that she wanted to become part of a collaborative care team. There was a group of primary care docs who were looking for a psychiatrist to consult on cases and, in more severe cases, to provide medical services. The way the pay worked was that the clinic got a chunk of money from the insurer for each person insured that they took care of. If they did not use all the money on care, they could keep the rest, and if they used more than they were given, they provided services for free -- no more money was forth coming. And, if the patients did not show progress, the company would terminate the contract. If they made referrals outside of the group, then the referral would be charged against their income. The group said she could potentially earn $45,000 per year for less than 1/3 time work, which she could do anytime, anywhere and she could also keep a private practice and work at the public mental health clinic.

Things were going well for Deb until she had a consult for a patient with major depressive disorder. The primary care doctor had tried every medication available and it did not seem to help. Deb suggested intensive psychotherapy, but that would take a good deal of her time and eat up a lot of the budget for that patient and because medication was not working, there was a good deal of doubt that psychotherapy would help much. There was the possibility of ECT, but that requires the clinic to pay a third party and in cases like Deb's there is only a 60% chance that it will be helpful. The members of the clinic got together and decided that Deb should advise on a cocktail of medication that may be helpful and that they would not do the psychotherapy or the ECT because of the high cost and no guarantee that they will work. At the end of the day, they did not want to spend all of the money without being able to demonstrate improvement.

**************STOP – DISCUSS QUESTIONS**************

Scenario 4:

Deb decided that she would moon light in a public mental health clinic. When she got there, she realized that there were many patients who would benefit from treatments that the county was not offering or providing due to budget constraints. Every time she saw a patient who fell into this category, she took time to inform them about alternative treatments. When patients had surrogates or guardians, she called them to make sure they were aware. Some of these patients made formal requests to the head of the public health department and received care. Deb felt that she had finally found her calling advocating for the treatment of patients in the public sector.

Buoyed by her effectiveness with her own patients, Deb began telling other providers at the clinic about her successes on behalf of her patients. She asked the other providers to tell her names of patients who might benefit from alternative and more costly treatment than they were receiving. Her colleagues became uncomfortable and never produced lists. She then began reviewing records of clinic patients on each day's schedule, treated by other providers, and called them following their visits to inform them of the potential availability of alternative therapies. She considered the director of the county program unethical for "rationing" as a justification for her ongoing advocacy.

At her annual review, Deb told the director of the community clinic about her actions. The next day, she was fired and served with a court order to stop contacting any patients associated with the clinic.

**************STOP – DISCUSS QUESTIONS*************