



## **Exploring the Dynamics of Ethical Decision-Making**

Handouts

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What Makes a Profession?

- A body of knowledge
- Social sanction and recognition
- A code of ethics

Few professionals express interest in ethics training

- I have common sense and values that will assure that I do "the right thing"
- I have ethical codes tied to my credential/ license that I can consult
- I got that training in previous schooling
- People who violate ethical principles are "bad" people and I am not that.
- If I have an ethical issue, I will ask for help (code, colleagues, supervisor, etc.)
- You can't "teach" ethics or the "right" way to act

But why might people who violate ethics or engage in misconduct do these things?

- Ignorance
- Unresourceful
- Differing values, morals, etc.

Did you know that...

- According to the Rules of the Board of Regents / Part 29.2a (9), you are engaged in "Professional Misconduct" if you are: "failing to wear an identifying badge, which shall be conspicuously displayed and legible, indicating the practitioner's name and professional title authorized pursuant to the Education Law, while practicing as an employee or operator of a hospital, clinic, group practice or multiprofessional facility, registered pharmacy, or at a commercial establishment offering health services to the public;"
- Do N.Y.S. CASAC's know: (§853.13.c(14) Misconduct) "no person shall use any of the following titles to engage in private practice unless otherwise authorized by law: Credentialed Alcoholism and Substance Abuse Counselor (CASAC), ... or Credentialed Problem Gambling Counselor (CPGC);"

- Do Certified Rehabilitation Counselors know that: [Code of Professional Ethics for Certified Rehabilitation Counselors (CRC) Section J.4(d) Privacy in Social Media] Rehabilitation counselors respect the privacy of their client's presence on social media and avoid searching a client's virtual presence unless relevant to the rehabilitation counseling process. If a rehabilitation counselor may search a client's virtual presence, this is disclosed in advance.

Differing values, morals, etc. How do these get formed, shaped, shifted?

- By satisfaction of biological drives (eat, sleep, etc.)
- By a satisfactory emotional experience
- Concrete rewards or punishments
- Through association of something with the love or approval of persons whose love or approval is desired.
- Through teaching by someone in authority.
- Through reasoning or reflective thinking

Why might we see ourselves as more ethical than others?

- We might judge ourselves by our good intentions and most noble moments, but others by what they do, especially the bad things. Some think that if their conscience doesn't bother them, then they have acted morally. We can easily minimize our own transgressions as small, but may not be as generous with others in the same manner.

Common elements in professional ethical codes in human service

- Belief in the dignity and worth of human beings.
- Right to humane treatment and to provide the highest quality of care
- Maintain a professional relationship with all persons served.
- Adherence to confidentiality
- Continue professional development through further education and training.
- Respect the rights and views of colleagues and allied professionals
- Respect the unique characteristics of the service relationship, including avoiding exploitative interpersonal transactions
- Avoid engaging in irresponsible behavior that would reflect poorly on the provider and/or the profession.
- Avoid claiming directly or implying professional qualifications that exceed those that have actually been attained

But different professions can have different standards: Example: Romantic/sexual relationships with former patients

- NYS CASAC: prohibit
- CRC & ACA: Five years

- NASW says you shouldn't but, if you do: *"If social workers engage in conduct contrary to this prohibition or claim that an exception to this prohibition is warranted because of extraordinary circumstances, it is social workers--not their clients--who assume the full burden of demonstrating that the former client has not been exploited, coerced, or manipulated, intentionally or unintentionally."* [NASW Ethical Standards 1.09(c)]
- American Psychological Association says two years, and... *"Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including..."* [APA Ethical Principles of Psychologists and Code of Conduct 10.08 (b)]

#### Dimensions of Ethical Decision Making:

- Means vs. ends: Do the ends justify the means?
- Good of individual vs. group: Am I responsible just to the person(s) directly involved or also to a larger collection of stakeholders?
- Source of decision-making authority: Is my decision driven by internal, individual judgment or compliance with external rules, laws, norms, policies, etc.?

#### Approaches to Making Ethical Decisions (*Source: Markkula Center for Applied Ethics*)

##### The Utilitarian Approach

The one that provides the most good or does the least harm. We ask our self: *Which option will produce the most good and do the least harm?*

##### The Rights Approach

Starting from the belief that humans have and deserve a basic dignity, the one that best protects and respects the moral rights of those affected. Just what are those basic rights (make one's own choices about what kind of life to lead, to be told the truth, not to be injured, to a degree of privacy, etc.) can be debated. *Which option best respects the rights of all who have a stake?*

##### The Fairness or Justice Approach

The idea that all equals should be treated equally or - if unequally - then fairly based on some standard that is defensible. *Which option treats people equally or proportionately?*

##### The Common Good Approach

Our actions should contribute to the benefits of the society we live in. The interlocking relationships of society are the basis of ethical reasoning and that respect and compassion for all others - especially the vulnerable - are requirements of such reasoning. This calls attention to the common conditions that are important to the well-being of everyone, such as laws, community protection, etc. *Which option best serves the community as a whole, not just some members?*

## The Virtue Approach

Actions ought to be consistent with certain ideal virtues that provide for the full development of our humanity. These virtues are dispositions and habits that enable us to act according to the highest potential of our character. *Which option leads me to act as the sort of person I want to be?*

The overlap of ethics with “unprofessional conduct” or “misconduct”

- Ethical guidelines can include direction that is both general (e.g. act in best interest of patient) and, at times, specific (do not violate confidentiality laws).
- Governing authorities (e.g. N.Y. State) typically provide specific behavioral prohibitions which can result in loss/suspension/etc. of license/certification

What kind of issue is this? [Source: Behnke, S. (2014, February). What kind of issue is it? Monitor on Psychology, 45(2). <http://www.apa.org/monitor/2014/02/issue>]

- Legal bin: Does it involve laws & regulations of your particular jurisdiction (federal, state, province, territory, etc.).
- Clinical bin: Does it involve the best treatment or service interests of the patient.
- Ethical bin: Does it relate to your Ethical Code and the “right thing” to do.
- Risk management bin: To what degree does a particular course of action increase or decrease exposure to liability.

## Some common ethical issues:

### *Confidentiality*

- Statutory requirements
- Clinical confidentiality
- Patient requests
- Duty to warn: pertains to a third party who is specifically threatened, a particular victim.
- Duty to protect: protect patient & other third parties from potentially threatening behavior. Are there “reasonably foreseeable” victims (including bystanders)? In considering harm risk, consider: type, seriousness, imminence, likelihood

### *“Business-related”*

- Diagnostic subterfuge
- Kickbacks
- Conflicts of interest
- Advertising and promotion

### *Agreement with employer, payer practice*

### *Patient relationships*

- Dual relationships
- Gifts

- Other boundaries

*Personal behavior* - Do not do anything in your personal life that destroys your ability to function as a professional.

- Criminal conduct
- Public conduct

*Providing the highest quality of care*

- Free of bias or improper promotion
- Unable to work with a patient
- Under-treatment or over-treatment
- Collegial relationships with other providers
- Colleagues not providing standard of care
- Practice within own areas of competency

*Digital professionalism*

- Confidentiality of data & communications
- Boundaries of communicating via email, texts, cell vs. office phone, etc.
- Personal vs. professional presence online
- Creating & maintaining telehealth standards
- Investigate patients online?
- Monitor your online reputation?
- Challenging misinformation

A Framework for Ethical Decision Making

- Recognize Something as Possibly an Ethical Issue: Could this decision or situation be damaging to someone or to some group? Does this decision involve a choice between a good and bad alternative, or perhaps between two competing "goods" or between two competing "bads"? Is this issue about more than what is legal, most efficient, most profitable, clinically optimal, etc.? If so, how?
- Get the Facts. What are the relevant facts of the case? What facts are not known? Can I learn more about the situation? Do I know enough to make a decision? What individuals and groups have an important stake in the outcome? Are some concerns more important? Why? Who are Possible Stakeholders?
  - Current patients      - Future patients      - Significant others      - Board of Directors
  - Staff                      - Referents                      - Community members
  - Other providers      - Fellow professionals      - General public
- What are the options for acting? Have all the relevant persons and groups been consulted and/or considered? If I work for an organization, are there policies to consider?
  - Conflict of interest      - Substance use and possession      - Ethical conduct
  - Fraternalization      - Professional conduct      - Respect for proprietary products
  - Whistleblower      - Equal Opportunity      - Confidentiality

Consider... - use of supervision - professional literature available to help with this?  
- consultation with experienced professional colleagues, State or national professional associations

- Evaluate Alternative Actions. Evaluate the options by asking the following questions:
  - Which option will produce the most good and do the least harm? (The Utilitarian Approach)
  - Which option best respects the rights of all who have a stake? (The Rights Approach)
  - Which option treats people equally or proportionately? (The Justice Approach)
  - Which option best serves the community as a whole, not just some members? (The Common Good Approach)
  - Which option leads me to act as the sort of person I want to be? (The Virtue Approach)
  
- Make a Decision and Test It. Including considering the four tests:
  - Test of Justice: Assess your own sense of fairness by determining whether you would treat others the same in this situation.
  - Test of Publicity: Ask yourself whether you would want your behavior reported in the press or in a courtroom.
  - Test of Universality: Assess whether you could recommend the same course of action to another colleague in the same situation.
  - Test of Moral Traces: Was expediency, politics, or self-interest involved in the decision?
  
- Act and Reflect on the Outcome. How can my decision be implemented with the greatest care and attention to the concerns of all stakeholders? How did my decision turn out and what have I (or “we”) learned from this specific situation?

What should we do if we see someone acting in an unethical manner? Bring to attention of..

- The person whose behavior is in question? (Exceptions when this is not the best initial strategy?)
- Supervisor, Manager, Administrator, etc. in organization?
- Program licensing or accreditation bodies?
- Professional licensing or credentialing body?
- Colleagues?

What steps can help elevate our level of ethical practice and proactively manage areas of potential ethical vulnerability? [*Source*: White, W. (2004). Professional ethics. In R. Coombs (Ed.), *Addiction counseling review: Preparing for comprehensive certification exams*. Lahaska Press]

- Take care of yourself! It is the physically, emotionally & spiritually depleted provider who is especially vulnerable.
- Get ethically educated!
  - Become familiar with your specific Code of Ethics and licenser Misconduct Standards.

- Seek out self-instructional reading and training that provides a safe environment for rehearsing and sharpening your basic ethical decision-making skills.
- Utilize Mentors! Develop a small cadre of colleagues that can provide a sounding board and objective advice on difficult ethical dilemmas.
- Know thyself! Practice rigorous self-monitoring in order to identify when you are moving into periods of heightened personal vulnerability and when you are entering a zone of ethical vulnerability in your relationship with any patients.
- Ask for help! Seek formal consultation when you are in a zone of vulnerability and when there appears to be an exception to the normal ethical prescriptions.
- Protect yourself! There are times that it is clinically warranted to be in a zone of vulnerability. Just don't be there alone, and create a paper trail (e.g., a journal, charting) within zones of vulnerability that document your ethical decision-making processes and decisions.

Some Resources:

For compliance with legal and regulatory requirements

- Electronic Code of Federal Regulations - <https://www.ecfr.gov> - US government website to locate exact federal laws & regulations, including HIPAA (45 C.F.R. Parts 160 & 164) and Confidentiality of Substance Use Disorder Patient Records (42 C.F.R. Part 2).
- New York State Office of the Professions Rules of the Board of Regents, Part 29 – Unprofessional Conduct - <http://www.op.nysed.gov/title8/part29.htm>
- New York State Office of Addiction Services and Supports – Part 853 - Credentialing of Addictions Professionals - <https://oasas.ny.gov/system/files/documents/2020/11/part-853.pdf>

For online professionalism

- National Association of Social Workers: <https://www.socialworkers.org> - Numerous guidance documents, including "Standards for Technology in Social Work Practice"
- National Council of State Boards of Nursing: <https://www.ncsbn.org> - "A Nurse's Guide to the Use of Social Media"
- Federation of State Medical Boards: <https://www.fsmb.org> - "Model Policy Guidelines for Social Media"

For ethical decision making

- Markkula Center for Applied Ethics: <https://www.scu.edu/ethics/>
- American Counseling Association: <https://www.counseling.org> - "Practitioner's Guide to Ethical Decision Making"