

Ethics Rounds

Multiple relationships and APA's new Ethics Code: values and applications

Learning Objective: Comprehend how the APA Ethics Code defines and addresses multiple relationships in its enforceable standards.

According to its preamble, the new APA Ethics Code "has as its goals the welfare and protection of the individuals and groups with whom psychologists work and the education of members, students and the public regarding ethical standards of the discipline." Standard 3.05, on multiple relationships, is an excellent example of how the code achieves these goals. To illustrate how it both protects and educates, Standard 3.05 can be broken down into five parts.

The first paragraph of the standard offers a definition that is new to the code. The definition states that a multiple relationship arises when a psychologist is in a professional role with an individual, and that, in addition to this professional role, one of three other conditions is met. Note the future aspect to the third condition--that the psychologist indicates that another relationship will occur at some later point in time.

STANDARD 3.05 MULTIPLE RELATIONSHIPS

(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

The first paragraph of Standard 3.05 thus informs psychologists and the public what constitutes a multiple relationship.

One of the most frequent misconceptions I encounter in consulting with psychologists is that multiple relationships are, by definition, unethical. The second paragraph of Standard 3.05 makes it clear that simply meeting the definition does not speak to the ethics of the multiple relationship. In order to assess the ethical appropriateness of the relationship, the second paragraph sets forth a test:

A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.

Note several things about this test. First, the test sets out criteria: *an impairment* in objectivity, competence or effectiveness, and *a risk* of exploitation or harm. In

assessing whether the test is met, the psychologist will therefore consider the likelihood of impairment or the risk of exploitation or harm. Second, the phrase "reasonably expected" is central in determining what level of likelihood must be present: what a reasonable psychologist would expect to occur. Would a reasonable psychologist expect that the multiple relationship will cause impairment or risks exploitation or harm? If a reasonable psychologist would not, the test is not met.

Third, there must be a causal connection between the multiple relationship and the impairment or risk. In other words, something about the relationship must reasonably lead a psychologist to expect that the relationship will cause impairment or risks exploitation or harm. Thus, that a multiple relationship exists, in and of itself, does not meet the test--a reasonable psychologist must expect that the multiple relationship will lead somewhere problematic. The third paragraph in Standard 3.05 emphasizes this point:

Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.

The definition in Standard 3.05 educates psychologists and the public about when a multiple relationship is present. The test that follows protects those with whom psychologists work, and thereby promotes their welfare, by making a safe space available for the psychologist and client to proceed.

One of the very enjoyable aspects of my position directing the APA Ethics Office is that I have the opportunity to listen to psychologists discuss ethical aspects of their work. Discussions about Standard 3.05 are especially interesting because of the wide variety of multiple relationships that arise in our profession. Often, though, I find myself thinking that a discussion ostensibly about the ethics of multiple relationships is not really about ethics at all.

What I mean is that often such discussions pose a specific question: whether a multiple relationship will lead to impairment or risks exploitation or harm. All the participants agree that if the multiple relationship were likely to lead to impairment or such risks, the relationship should be avoided. Thus, the debate is not about values--protecting from harm and promoting welfare--but is rather about what effect a particular multiple relationship will have on a particular client. While the answer to this clinical question has profound ethical implications, the disagreement remains on clinical and technical grounds. As psychologists, we can agree upon and share the underlying values.

The APA Ethics Code recognizes that because of the many roles psychologists assume in their work, family, community and social lives, multiple relationships arise in unexpected ways. Some of these multiple relationships are potentially harmful. The fourth paragraph in Standard 3.05 addresses potentially harmful, unanticipated multiple relationships:

(b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

Note that the touchstone is again what a reasonable psychologist would do. The psychologist's focus will be on the affected person's best interests and on complying

with the Ethics Code, which has as its focus the individual's welfare and protection. Thus, the Ethics Code continues to return to and emphasize its central values of doing good and not doing harm, found in Principle A of the code's General Principles, Beneficence and Nonmaleficence.

In its fifth and final paragraph, Standard 3.05 recognizes that psychologists are sometimes required to serve in more than one role in judicial or administrative proceedings, and so cannot always avoid or fully resolve a potentially harmful multiple relationship. When a psychologist encounters such a situation, the Ethics Code focuses the psychologist on informing those affected about the change in expectations. The reasoning behind the code's language is that if a psychologist must take on a potentially harmful multiple role, the best way to help protect those affected is to inform them of the change in circumstances:

(c) When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality and thereafter as changes occur. (See also Standards 3.04, Avoiding Harm, and 3.07, Third-Party Requests for Services.)

Thus, Standard 3.05:

- * Defines a multiple relationship.
- * Provides a test for when psychologists refrain from entering into a multiple relationship.
- * Indicates what psychologists do when an unanticipated and/or unavoidable multiple relationship arises in their professional lives.

The goal of Standard 3.05, like the goal of the code as a whole, set forth in the preamble, is "the welfare and protection of the individuals and groups with whom psychologists work and the education of members, students and the public regarding ethical standards of the discipline."

Standard 3.05 illustrates that an excellent way to protect our clients and promote their welfare is to educate the public about our profession's core values and to inform psychologists about how these values can be implemented in their everyday practice.

Ethics Rounds

Sexual involvements with former clients: A delicate balance of core values

Learning Objective: Comprehend the values and reasoning behind the standard in APA's Ethics Code that addresses sexual involvements with former clients.

The Ethics Code seeks to avoid harm and protect autonomy, informed by solid clinical thinking and good research.

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The APA Ethical Principles of Psychologists and Code of Conduct--our ethics code--consists of general principles and standards of conduct, as its title reveals. The general principles set forth the values central to our profession. The ethical standards apply those values to psychologists' day-to-day practice across the broad range of our discipline. When conflicts arise between values, the standards must negotiate among the competing values. Ethical Standard 10.08 is an excellent illustration of how the code accomplishes this essential function.

As a profession, we have learned all too well the harms that occur when psychologists become sexually involved with their clients. The harms are so clear that our code, like the codes of all major mental health organizations, absolutely prohibits such involvements. Sexual involvements with former clients and patients, however, are more complicated from an ethical perspective. Time may attenuate the intensity and even the likelihood that an involvement will result in harm. Permanently prohibiting involvement may compromise the client's exercise of autonomy in determining with whom, and how, to be involved in personal relationships. The issue of sexual involvements with former clients therefore requires its own analysis to determine when, if ever, such involvements may be ethically permissible or, put a different way, whether and to what extent such involvements should be prohibited.

Analyzing this issue requires examining post-termination sexual involvements from at least two perspectives: that of our values and that of our knowledge and data about the dynamics and effects of such involvements--in short, the ethical and clinical/research perspectives. From the ethical perspective, a conflict arises between General Principle A, Beneficence and Nonmaleficence, and General Principle E, Respect for People's Rights and Dignity. The conflict arises because Principle A exhorts psychologists to do good and not do harm, while Principle E exhorts psychologists to respect individuals' right to self-determination.

Note how the code settles this conflict in the case of sexual involvements with current clients and patients; harm is so likely to occur, and autonomy so likely to be compromised in the therapy relationship, that the code establishes an absolute prohibition against sexual relationships. In post-termination relationships, however,

given the passage of time, the harm becomes less certain and the likelihood that a client's autonomy will be compromised less clear. Here we see the important relationship between the ethical and the empirical: To clarify and deepen the ethical analysis, we must examine these relationships in light of data.

The possibility of post-termination sexual involvements raises a number of empirical questions directly relevant to our ethical analysis, as the following six examples show:

- **Does knowledge, on the part of the psychologist or the client, that a post-termination sexual involvement is possible, affect the service provided?** It will be important to examine whether, and how, such knowledge interferes with effective treatment. It will also be important to assess whether, in cases where post-termination involvements arise, something happens in the treatment to lay the foundation for the subsequent involvement. Such occurrences would almost certainly be counter-therapeutic.

- **How often do patients seek additional treatment with their psychologist after a therapy has ended?** This question is important because a post-termination sexual involvement will preclude the possibility of any further professional relationship between the psychologist and client.

- **Are individuals able to exercise a truly autonomous choice to enter into a sexual involvement with a former treating psychologist?** The answer to this question will likely depend on several factors, such as the amount of time that has passed since therapy has terminated; the nature, intensity and duration of the treatment; and the individual's personal history, psychological dynamics and current mental status. The degree to which an individual's autonomy is compromised in a relationship with a former treating psychologist, for example, would differ if the treatment were a brief intervention for a specific phobia that ended five years ago, as opposed to a psychoanalysis that terminated in the past month and that had addressed a significant history of sexual exploitation at the hands of a trusted authority figure.

- **Under what circumstances do post-termination sexual relationships result in harm?** This question is centrally important because the first general principle of the Ethics Code involves nonmaleficence: Psychologists strive to do no harm. Note the close relationship with the question above. To the extent that an individual's autonomy is compromised, that individual may be less able to avoid entering into harmful or exploitative relationships.

- **Is there a consensus among psychologists about whether post-termination sexual involvements are ethically problematic?** Strong agreement among psychologists of different theoretical and technical orientations would suggest a considered professional judgment concerning whether such involvements lead to exploitation or harm.

- **When are post-termination involvements most likely to occur?** If the majority of involvements occur when autonomy is most compromised and harm is most likely to occur, it may make good ethical sense to create a heavy presumption against post-termination involvements.

Note three things about Ethical Standard 10.08. First, by creating an absolute prohibition against sexual involvements for two years post-termination and then placing the burden on the psychologist to demonstrate that the involvement is not exploitative, the standard gives priority to nonmaleficence while leaving room for the exercise of client autonomy. By setting forth clinically based criteria relevant to assessing whether harm is likely to occur, paragraph (b) confirms this balance of values, emphasizes the importance of avoiding harm in these relationships, and provides concrete direction in how to assess the likelihood of exploitation.

Second, evidence available at the time standard 10.08 was written suggests that the significant majority of these involvements take place within two years of termination. The two-year absolute prohibition immediately following termination is when a client's ability to exercise a fully autonomous choice with regard to a former treater seems most likely to be compromised, and when sexual involvement that had been suggested explicitly or by innuendo during treatment would most likely come to fruition. In this manner, the standard is founded upon data about how to avoid a very high percentage--perhaps nearly all--of potentially harmful relationships.

Third, standard 10.08 illustrates how our ethics and our evidence can be closely related. Over time, data may emerge that speak to the questions above in a manner that recommends an absolute prohibition against post-termination sexual involvements. In the alternative, the evidence may suggest that relaxing the prohibitive aspects of the standard is appropriate. In whichever direction the standard evolves, its evolution should rest upon solid clinical thinking and good research.

10.08 SEXUAL INTIMACIES WITH FORMER THERAPY CLIENTS/PATIENTS

(a) Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy.

(b) 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 (1) the amount of time that has passed since therapy terminated; (2) the nature, duration, and intensity of the therapy; (3) the circumstances of termination; (4) the client's/ patient's personal history; (5) the client's/patient's current mental status; (6) the likelihood of adverse impact on the client/patient; and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client/patient. (See also Standard 3.05, Multiple Relationships.)

Ethics Rounds

Cooperating with other professionals: Reflections on Ethical Standard 3.09

Learning Objective: Grasp ethical aspects of psychologists' relationships with other professionals in the service of mutual clients.

Psychological research can inform the debate over sentencing reform.

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At some point in every psychologist's career, there comes an occasion to work with another professional in order to serve a mutual client. The range of professionals with whom psychologists work reveals the breadth of what we do; psychologists serve in schools, in courtrooms and in jails, in hospitals and in mental health centers, in law enforcement and in the military, and in corporations large and small. Working effectively in a particular setting often entails cooperating with other professionals.

Cooperating with other professionals speaks to a goal fundamental to psychology, found in the Preamble to the Ethics Code, which states that the code has as a primary goal "the welfare and protection of the individuals and groups with whom psychologists work." With this very general concept as a context, the General Principles section of the Ethics Code sets forth the values central to our profession, while the ethical standards apply those values to our day-to-day practice. The standards provide direction when our values conflict, or potentially conflict, with one another--that is to say, when psychologists encounter an ethical dilemma.

Cooperating with other professionals raises interesting and challenging ethical dilemmas. General Principle B, "Fidelity and Responsibility," states "Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of those with whom they work...." General Principle E, "Respect for People's Rights and Dignity," states "Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination." A possible tension arises between these two general principles and their inherent values because cooperating with other professionals will sometimes entail gathering, and sharing, information of a highly personal and private nature.

Being mindful of the potential tension between these two goals--benefiting clients through cooperating with other professionals and respecting clients' dignity by protecting their confidential information--can be helpful when psychologists find themselves in the position of sharing or seeking out information from other professionals. To be overly restrictive in the information we share or receive can render ourselves or other professionals unable to be as helpful as we might otherwise be. To be overly disclosing can reveal information that unnecessarily exposes our clients. Each alternative implicates and potentially compromises a value. If too little information is shared, our effectiveness is diminished; if too much, clients are not shown the respect they are due.

An indication of whether we have found the right balance can sometimes be found in considering how we would feel were the client a close friend or family member of our own. Would our thinking be that too little information had been disclosed, leading to a sense of frustration that the appropriate information for effective treatment had not yet been made available? In the alternative, would our sense be that too much had been revealed, and that private information concerning someone we care about deeply had been needlessly given away?

The ethical standards reflect the values in general principles B and E, as well as the possible tension between them. Note that Standard 3.09--which, through its use of the phrase "when indicated and professionally appropriate" leaves ample room for professional judgment--makes reference to Ethical Standard 4.05, from Section Four of the Ethics Code titled "Privacy and Confidentiality":

3.09 COOPERATION WITH OTHER PROFESSIONALS

When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their clients/patients effectively and appropriately. (See also Standard 4.05, Disclosures.)

When psychologists exercise professional judgment in determining when to disclose confidential information in order to cooperate with another professional, and identify what information should be shared, Ethical Standard 4.05 sets the parameters for the conditions under which the disclosure takes place:

4.05 DISCLOSURES

a) Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient, or another legally authorized person on behalf of the client/patient unless prohibited by law.

(b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to (1) provide needed professional services; (2) obtain appropriate professional consultations; (3) protect the client/ patient, psychologist, or others from harm; or (4) obtain payment for services from a client/patient, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose. (See also Standard 6.04e, Fees and Financial Arrangements.)

Psychologists will recognize that, perhaps ironically, the tension between cooperating with other professionals and protecting private information can be especially felt in health-care settings. In health-care settings, information can be readily available to anyone involved in a treatment or assessment, regardless of how peripheral that involvement may be. The Ethics Code highlights an important distinction: that information can be obtained or shared is a question separate from whether it *ought* to be obtained or shared. Ethical Standard 4.04 states that the touchstone for disclosing confidential information is its relevance to the matter at hand and its connection to the individuals with whom the information will be provided:

4.04 MINIMIZING INTRUSIONS ON PRIVACY

(a) Psychologists include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

(b) Psychologists discuss confidential information obtained in their work only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters.

It is interesting to note that very similar concepts are found in certain laws. As an example, the Health Insurance Portability and Accountability Act (HIPAA) "minimum necessary" rule applies when protected health information is disclosed for non-treatment-related reasons and states "a covered entity must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request." Through its psychotherapy-notes exception, HIPAA gives heightened protection to disclosures of treatment-related information even to other health-care providers. (See HIPAA Privacy Rule, www.cms.hhs.gov/hipaa, sections 164.501 and 502.) We thus see that, like our Ethics Code, the law also negotiates the tension between sharing information and protecting privacy.

To use the information we obtain--at the right time, in the right way, toward the right end--is a challenge that lasts our entire professional lives. The *ethical* aspect of how we use that information involves values central to our work, values set forth in the General Principles section of our Ethics Code. These values, which the ethical standards bring to life in our daily work, are to promote our clients' welfare in a manner that respects and protects their human dignity.

ETHICS ROUNDS

Responding to a colleague's ethical transgressions

Learning Objective: Acquire a process for responding to a colleague's ethical transgressions based upon an understanding of the values underlying APA's Ethics Code.

Becoming aware that a colleague may have engaged in ethically problematic behavior raises an ethical challenge in its own right.

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Of the joys of being an uncle, few surpass that of being awoken from an afternoon nap in your favorite chair by your five-year old niece crawling up onto your lap, book in hand, asking to be read a story. Recently my niece found me in precisely such a situation and presented me with "The Dot," a delightful children's book about a young girl, Vashti, who sits in art class with a blank piece of paper, convinced she cannot draw. After awhile Vashti's teacher tells her to "Just make a mark and see where it takes you." Uncertain and frustrated, Vashti jabs the paper with her marker, making—a dot. Her teacher examines the dot carefully and then tells Vashti to sign the bottom of her paper. The next week Vashti discovers that her dot, with her signature, has been placed in a frame and hangs above her teacher's desk. "The Dot" continues as Vashti assimilates the meanings of what her teacher has done.

"The Dot" explores what it means to take responsibility for one's work in a public way. Back in the Ethics Office, I found myself wondering what "The Dot" says about the ways we as psychologists take responsibility for our work and for our profession. My thoughts turned to what I find one of the most challenging and complex set of ethical responsibilities we face: Responding to a colleague's ethical transgressions.

1.04 Informal Resolution of Ethical Violations

When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved. (See also Standards 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority, and 1.03, Conflicts Between Ethics and Organizational Demands.)

1.05 Reporting Ethical Violations

If an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for informal resolution under Standard 1.04, Informal Resolution of Ethical Violations, or is not resolved properly in that fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, to state licensing boards, or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or

when psychologists have been retained to review the work of another psychologist whose professional conduct is in question. (See also Standard 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority.)

The first ethical principle in our Ethics Code, Beneficence and Nonmaleficence, says that psychologists "Strive to benefit those with whom they work and take care to do no harm." Ethical Standards 1.04 and 1.05 are built upon the concept that our ethical obligations extend beyond the responsibilities we have toward the individuals and groups with whom we work: We have responsibilities to the individuals and groups with whom *other psychologists work* and to the *profession of psychology* as well. Ethical Standards 1.04 and 1.05 thus tie us to the community of all psychologists by giving us responsibility not only for our own ethics, but for the ethics of our colleagues, too. Abiding by Ethical Standards 1.04 and 1.05 are ways we "sign" for our profession—by accepting that our individual work is part of something larger and by assuming responsibility for ensuring that we, and our colleagues, remain mindful of how central ethics should be to all of our professional lives. Standards 1.04 and 1.05 place our work in a communal context and emphasize that an essential part of being an ethical *psychologist* is helping to maintain an ethical profession.

This public component of our ethical obligations resonates deeply with many psychologists. Psychologists who learn of serious ethical transgressions that inflict harm on students, research subjects, therapy clients and others can find the experience itself painful, especially so when the confidentiality strictures in Standard 1.05 prohibit disclosing the behavior. The desire to do something in these circumstances reveals a commitment to protect the public from harm and to maintain the ethical standards of the profession.

Taking action

That we have a responsibility to uphold the ethics of our profession is a starting point. Thinking through what that responsibility actually means in our professional lives is challenging in all but the most straightforward of matters. One complexity in putting these standards into practice is the cultural context: As a society, we don't like snitches. A review of what happens to whistleblowers—even those who disclose behavior that is clearly wrong and harmful—reveals a deep ambivalence about "tattling." A second complexity is that the nature of our relationships may make pointing out a possible ethical violation complicated and professionally (if not personally) risky. Retaliation is especially a concern when there is an imbalance of power between the two individuals involved. Third, often we have limited information that leaves us uncertain about whether what we know is sufficient to raise the specter of a possible ethics violation, and even raising the specter of an ethics violation can result in concerns about unfairly defaming a reputation. Fourth, responding to ethically problematic behavior may entail a significant commitment. Filing an ethics charge or a board complaint, however appropriate in certain circumstances, may offer a relatively uncomplicated response that requires fairly little effort on our part. Engaging a colleague in a process of addressing and correcting a possible violation may entail expending considerable resources in terms of time and energy. Fifth, while many of us are trained to talk about difficult things, our training tends not to prepare us very well to talk about problematic ethical behavior with our colleagues, and we can feel intimidated in the face of an uncertain

and possibly defensive or angry response. All of these reasons may complicate our response to a possible ethics violation, even when we feel confident that some response is called for.

Owning membership in our community

I would venture to say that every psychologist I know has come across a colleague's ethical transgression, however significant or however slight. It can be informative to ask ourselves how we responded and how we understand our response—or nonresponse as the case may be. As APA places greater emphasis on ethics education, I look forward to our thinking through in a careful and systematic manner how we apply our commitment to uphold the ethics of our profession and put Standards 1.04 and 1.05 into practice. At APA's Annual Convention in Hawaii, I had the benefit of hearing Tom Nagy, PhD, chair of the task force that drafted the 1992 revision of the Ethics Code, discuss the challenges posed by these standards. I view his talk as an invitation to the field to explore these issues. I sometimes receive calls concerning how a student should respond to a classmate's ethically questionable behavior. Part of my reaction—that I most often don't share—is that we can hardly expect our students to succeed at something that we experienced psychologists don't do so well.

When Vashti was given responsibility for her work in a public arena and accepted responsibility in a public way, her relationship to her creativity was transformed. When we renew our membership to APA, we sign a statement that says we agree to abide by the Ethics Code. The majority of states adopt the APA Ethics Code into their laws and many of us have our psychology license displayed in our offices, visible to our clients and colleagues. The public acknowledgement and acceptance of our membership in the profession of psychology has many facets. A facet I hope we explore more deeply is how we own membership in the community of psychologists by taking responsibility for upholding our own ethical practices, those of our colleagues, and thereby the ethical standards of our profession as well.

ETHICS ROUNDS

The discipline of ethics and the prohibition against becoming sexually involved with patients

Learning Objective: Appreciate the importance of understanding the reasoning behind ethical standards in the APA Ethics Code, as illustrated by the prohibition against sexual involvements with patients.

The discipline of ethics entails giving reasons, which can be a valuable exercise in regard to even the most fundamental of our ethical standards.

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Recently I shared with a group of learned colleagues that an invitation I had received was causing me some significant anxiety. The invitation was to speak at the New York Academy of Medicine on a panel convened by the Association for Psychoanalytic Medicine, on the topic of sexual boundary violations in psychoanalytic practice. A colleague captured the totality of what I felt I had to offer the audience: "Don't do it!" Desperate for more than three words to fill my allotted time on the panel, I pressed my colleagues to discuss the reasons *why* we prohibit sexual involvements.

As a discipline, ethics involves more than establishing rules: Central to the enterprise is setting forth our reasons. In class and committee discussions, the phrase "That's obvious" or some equivalent invites undisciplined thinking, because such phrases so easily help us avoid the challenging work of putting our reasons into clear words. I was therefore grateful for my colleagues' willingness to explore the reasons behind one of our most fundamental and apparently straightforward ethical standards:

10.05 Sexual Intimacies With Current Therapy Clients/Patients

Psychologists do not engage in sexual intimacies with current therapy clients/patients.

An anecdote shared by a close friend in a psychoanalytic institute helps capture the clinical dilemma underpinning the ethical analysis. My friend's institute was sponsoring a workshop on ethics. By virtue of recent incidents, the topic of sexual involvements came up. During a workshop discussion an analyst remarked that he would never be at risk for a sexual involvement. My friend's immediate response was that *everyone* is at such risk; believing one is not at risk is, in and of itself, a risk factor. As my friend listened more closely, however, he concluded that this individual was indeed correct in his assessment. The individual would never cross a boundary because he would never allow himself to get close enough to a patient for a boundary crossing to occur.

The anecdote is telling because it captures a dynamic central to the dilemma: The qualities that bring a therapy or an analysis to life may be the very qualities that bring us toward an edge, the crossing of which can be hugely harmful. The first principle in our Ethics Code, Beneficence and Nonmaleficence—Do Good and Do No Harm—captures this dilemma. We strive not only to avoid harm, but to do good as

well. To the extent that we restrict the range of what we allow ourselves to feel in a treatment, we may limit our capacity to do good. From an ethical perspective, we foster the conditions that allow us to do good, but remain aware of how those very same conditions can lead to harm.

Considering the prohibition

As the discussion amongst me and my colleagues about Ethical Standard 10.05 unfolded, several reasons we proposed to explain the absolute prohibition against sexual involvements fell short in some significant respect, even though each captured something important and true. The argument that a power differential makes an involvement unethical seemed weak, because many relationships (many marriages and partnerships, for example) contain significant differences in power and influence. Such differentials, in and of themselves, do not make a relationship unethical. That a sexual involvement fails to put the patient's best interest ahead of our own also seemed untenable as an independent and sufficient reason to explain the absolute prohibition, insofar as we put our interests ahead of our patients in many ways. The fees we charge, the times we agree to see patients, scheduling vacations and cancelling an appointment for an emergency are all appropriate ways in which we may put our needs ahead of our patients'. A third argument proposed was that sexual involvements place patients at great risk of harm. Again, while true, the argument seemed not to carry the day. Many interventions, such as surgery, carry significant risks. The issue is not one of risk, but of risks in relation to likely benefits. Finally, the argument was put forth that sexual involvements with patients are always harmful. This argument was seen as compelling but complicated, insofar as the prohibition would rest entirely on an empirical claim about specific cases. Licensing boards and ethics committees—unlike courts in a malpractice action—do not need to find harm in order to find a violation, and thereby “de-link” the ethical and the empirical in relation to specific cases. Such “de-linkage” allows a committee or board to find a violation apart from finding harm and thereby provides considerably greater discretion in finding a violation. As the discussion continued, it seemed clear that such discretion was an essential and valuable feature of the ways boards and committees work, and that an absolute prohibition should not depend upon finding harm in every specific case.

Three reasons did seem independent and sufficient as ethical grounds for an absolute prohibition against sexual involvements with patients. First, a sexual involvement makes the work of psychotherapy or analysis impossible. You cannot conduct a psychotherapy or analyze a patient with whom you're having, or have had, a sexual involvement—the method you use to help the patient has been neutralized. A sexual involvement is unethical because you can no longer exercise beneficence in the professional relationship.

Second, there is no legitimate claim for a psychologist to derive this kind of gratification (sexual gratification) from *this* kind of relationship (a psychotherapeutic or psychoanalytic relationship), and the very nature of the gratification places the patient at risk of substantial harm. In other words, it is unethical to place a patient at risk when that risk is created by a gratification that the psychologist has no legitimate claim to deriving from the relationship.

Third, the relationship between a psychologist and a patient is a *fiduciary* relationship. In a fiduciary relationship, there is an overarching ethical

obligation not to derive illegitimate forms of satisfaction that place the patient at risk of harm. A sexual involvement violates the fiduciary nature of the relationship and is therefore unethical. These three arguments appear to stand on their own as independent and sufficient reasons for why sexual involvements with patients are always unethical.

Ethics committees' roles

The question of how an ethics committee should respond to a sexual involvement is complicated and inevitably depends on the individual case. While licensing boards focus on protecting the public and courts examine whether the elements of a legal claim have been met, ethics committees strike me as having a somewhat different role: to bring their profession's ways of thinking to bear on the situation. Our training as psychologists serving on an ethics committee counsels us to remain mindful of all the parts of what can be complex situations. That means keeping in mind the interests and needs of the patient, who may have suffered a significant harm, as well as those of the psychologist, who may be a predator at one extreme or, at the other, a psychologist in the midst of a life crisis who engages in behavior that he or she never would have in other life circumstances. Committees may also have to consider the interests and needs of a training site, insofar as sexual involvements can have a profound effect on students and supervisees who learn of the involvement. Sexual involvements can also profoundly affect other patients and the public's perception of and confidence in what psychotherapy and psychoanalysis are about. Ethics committees are well aware that the impact of sexual involvements is never confined solely to the psychologist and the patient.

An ethics committee neither can nor should weigh all the interests and needs the same, nor give all the interests and needs equal priority. Yet unlike other bodies, the members of an ethics committee have as part of their professional background and training the skills to keep all of these interests in mind as the committee fashions a response. And with that enormous challenge, ethics committees, above all, need to be *wise*.

ETHICS ROUNDS

The work of the APA Ethics Office: frequent calls we receive

Learning Objective: Grasp the process by which the APA Ethics Office provides ethics consultations to psychologists.

Reviewing calls to the Ethics Office shows how closely ethical, legal and clinical issues are entwined in requests for ethics consultations.

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The APA Ethics Office has five primary roles: to adjudicate ethics complaints; to provide ethics education; to assist the association in developing policies related to the Ethics Code; to promote the presence of, and interest in, ethics throughout the APA membership and governance process; and to offer consultation on ethics-related questions. Ethics consultation is one of the most interesting aspects of our work because of the wide range of ethical dilemmas that psychologists encounter. Given that APA has 56 divisions that cover the breadth of human and nonhuman animal experience, it is not surprising that on any given day the Ethics Office will receive calls as widely divergent as a psychologist asking whether a mandatory-reporting law applies to a research study, a psychologist inquiring whether it is ethical to adopt a child she encountered in a clinical setting, and a psychologist wondering whether it is permissible under the Ethics Code to videotape portions of a therapy session for a reality TV show.

Themes emerge from the hundreds of calls the Ethics Office receives each year. A theme that has become central to our work in providing consultation is identifying and distinguishing the ethical, legal and clinical aspects of the question posed. While making these distinctions can sometimes be a bit frustrating to the caller because further consultation is necessary, clarifying what questions need to be asked can also offer a structured path for resolving the dilemma with which the psychologist is struggling.

Two kinds of calls the Ethics Office frequently receives that illustrate this theme involve mandatory child-abuse reporting and *Tarasoff*—the duty to protect.

On a regular basis, the Ethics Office receives calls from members wanting to know whether a particular situation triggers a mandatory child-abuse report. Our practice is to hear the facts of the case and then attempt to elicit any additional relevant information the caller may not have mentioned. Sometimes this process will make clear whether a report is necessary, but often not. At this point in the process it can be helpful to clarify that the question posed—whether the legal threshold for a duty to report has been reached—is a legal rather than an ethical question, the answer to which will likely depend on the relevant jurisdiction's law. The reason the answer to this question rests initially with the law rather than with our ethics is because Ethical Standard 4.05(b) makes clear that psychologists must disclose information in response to a legal mandate:

4.05 Disclosures

(a) Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient, or another legally authorized person on behalf of the client/patient unless prohibited by law.

(b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose....

In some states, the status of being a psychologist triggers the duty to report suspected child abuse. In others the duty is triggered when one is acting in one's professional role as a psychologist. In the latter jurisdictions, seeing evidence of child abuse on a weekend family picnic would likely not trigger the legal duty to report; in the former jurisdictions, it may well.

Because the answer to the caller's question will rest initially with a legal rather than an ethical determination, the Ethics Office will refer the psychologist to someone with expertise in the mental health laws of that jurisdiction. In matters that are especially murky—for example, abuse that took place in the distant past by a perpetrator who no longer has access to minors—the Ethics Office may also suggest that the psychologist contact the jurisdiction's child protective services. Many such offices take anonymous calls and will render an opinion—which the psychologist can then document—regarding whether a report is required. The important point from the perspective of the Ethics Office is that Ethical Standard 4.05 establishes a process whereby the resolution to the psychologist's ethical dilemma follows from an assessment of the law, based upon the clinical situation.

A second kind of call that the Ethics Office receives illustrating the value of distinguishing between ethical, legal and clinical issues involves the duty to protect, sometimes referred to in shorthand as a *Tarasoff* question in reference to the 1976 legal case from the Supreme Court of California. Usually a psychologist will provide details of a client who has threatened to harm a "third party"—an individual outside the treatment relationship—and then asks whether there is a duty to take some action, such as to disclose the threat to the threatened individual or to another person or organization such as the police. The Ethics Office will again refer to Ethical Standard 4.05 as the ethical context for answering the legal and clinical questions. Standard 4.05(b) is usually most relevant for these questions:

4.05 Disclosures

(b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to (1) provide needed professional services; (2) obtain appropriate professional consultations; (3) protect the client/patient, psychologist, or others from harm....

Jurisdictions generally fall into two broad categories in regard to their duty-to-protect laws: those that have laws creating a duty to disclose information and those that have laws permitting the disclosure of information. The answer to the ethical question will therefore rest upon a clinical assessment to determine the likelihood

that there is an actual threat of harm and a legal determination regarding how the jurisdiction's law applies to the clinical situation. The clinical assessment will thus provide the foundation for the legal and the ethical response. The psychologist will use the clinical assessment to determine the likelihood that a genuine threat of harm is present. Based upon this clinical assessment, the psychologist will determine whether the jurisdiction's law requires or permits the psychologist to disclose information. If the psychologist determines that there is a legal mandate or legal permission to disclose information in response to a threat, the psychologist will apply Ethical Standard 4.05. In this instance, as in the mandatory reporting situation, the ethical follows upon the legal which, in turn, follows upon the clinical.

Calls to the APA Ethics Office involving mandatory child-abuse reporting and the duty to protect illustrate the close relationship between ethics, law and our clinical work. One aspect of an ethics consultation is to explore how these perspectives fit together. An overarching message is that legal and ethical dilemmas never arise in a vacuum. They arise in the course of our work as psychologists. Our background, training and experience as psychologists are therefore always central in formulating our ethical response.