

July 21, 2009

Memorandum

From: Movers of NBI#34E, Beth Wiggins, Laurie Wagner, Judy Van Hoorn, Bill Strickland, Allen Omoto, Corann Okorodudu, Jennifer Kelly, and Martha Banks

To: APA's Board of Directors, Council of Representatives and Ethics Committee

Subject: NBI #34E Movers' Response to Ethics Committee's Report, Including Movers' Substitute Motion

1. Council's August 2009 Agenda Item #4 addresses New Business Item #34E, which recommends a proposed course of action to remedy a discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code of Conduct (2002) and Ethical Standards 1.02 and 1.03. The Movers of the NBI, the Ethics Officer and the Ethics Committee worked together from the beginning on this motion. In fact, the Movers consulted with the Ethics Officer and Ethics Chair regarding how to word parts of the motion. We, the Movers, saw our work with the Ethics Committee over the past year as a cooperative process in which we were all working toward the goal of the Ethics Committee finding appropriate wording to change Ethical Standards 1.02 and 1.03 and the Movers then withdrawing our new business item as unnecessary. Discussions between the Ethics Committee and the Movers about this two step process (Ethics Committee recommends language, Movers withdraw motion) date back to fall 2008. As readers of the Council Agenda will note, however, the Ethics Committee's response does not make any recommendations for resolving the discrepancy; rather, the Ethics Committee goes so far as to recommend that Council reject our main motion. Given that result, we strongly urge the Board of Directors to recommend that Council approve the substitute motion included below with this response. This substitute motion takes into consideration the Ethics Committee's report and in particular deletes any reference to the term "in keeping with basic human rights."
2. Although the Ethics Committee presents a reasoned report to accompany its recommendation, we respectfully suggest that the Ethics Committee report is not responsive to the NBI's main motion. The main motion directs the Ethics Committee to provide language that resolves the discrepancy. The motion suggests adding the phrase "in keeping with basic human rights" to Standards 1.02 and 1.03 as one possible approach. Rather than providing language, the

Ethics Committee's report consists of an examination of the advisability of that one option, concluding that it would not be advisable to add that phrase.

However, the main motion was very clear that we looked to the Ethics Committee to recommend wording, not approve or disapprove one possible option, a point we reiterated in our conversations with the Chairs of the Ethics Committee during the last year. Indeed, during a conference call last fall, the Ethics Officer, the Chair and Chair-Elect, and several movers of the NBI together generated a number of possibilities for the Committee's consideration. Additionally we, the Movers of the NBI item, acknowledged to the Ethics Committee as far back as fall 2008 that we understood language other than "in keeping with basic human rights" would probably be needed in order to correct the discrepancy between the aspirational and enforceable parts of the Ethics Code. This winter, in our response to the Committee's Call for Comments, we emphasized that many different strategies and approaches could be used and provided illustrative examples. Our response is still available on the Ethics Committee's website.

3. The Ethics Committee suggests that all comments received on this topic will be retained for use by a future committee—at an undetermined time—when the Ethics Code is next revised. Currently there is no plan or timeline for an overall revision of the Ethics Code and no funds allocated for such an endeavor. Given APA's financial situation we believe it is unlikely that any funds will be available in the foreseeable future. We suggest that putting off action on this issue to an undetermined date will continue APA's track record of providing a lightning rod for those who have been critical over the last few years of APA's actions regarding human rights.
4. Our substitute motion directs that the Ethics Committee come back to Council in February 2010 with proposed language. We think whatever language is to be added needs careful consideration and that drafting language hastily between now and the August meeting (or at the August meeting) could lead to error and unintended consequences. However, given the amount of analysis done thus far, by the February 2010 COR Meeting, it should be possible for the Ethics Committee to construct language that would resolve the discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code of Conduct (2002) and Ethical Standards 1.02 and 1.03.
5. While the Ethics Committee statement of June 2009 that there is no defense to torture under the Code appears helpful we see problems with the statement.
 - a. We are concerned that the Ethics Committee states that the one and only human right that is impermissible for psychologists to violate under Ethical Standard 1.02 is the right not be tortured. We do not see this statement as a step forward when any and all other human rights violations are defensible under Standard 1.02 as long as they involve adhering to the requirements of the law, regulations or other governing legal authority.

- b. We are further concerned that by addressing only “torture,” the statement is far less encompassing than resolutions already adopted by Council in 2006, 2007, and 2009, and the 2008 amendment. These resolutions ban psychologists’ activities in the areas of cruel, inhuman, and degrading treatment and punishment, as well as torture. With this omission in its statement the Ethics Committee makes psychologists’ activities in those areas defensible under 1.02. Concerns about definitions are addressed by referencing the achieved definitions of terms in Council’s resolutions cited above.
- c. We are concerned that the Ethics Committee’s addendum to its June statement can be understood as including only the specifically mentioned techniques as indefensible and thus makes all other unnamed techniques potentially defensible. As all of the authors of the 2008 amendment are Movers of the NBI we wish to convey that the intent of the amendment was to ban all forms of torture and cruel, inhuman and degrading treatment and punishment and not simply specifically named ones. The listed techniques in the amendment are examples and are not exhaustive.
- d. We are concerned that the Ethics Committee’s June statement has no legal standing while, of course, Ethical Standard 1.02 as part of the Ethics Code does have legal standing. Regardless of the Ethics Committee’s statement, the fact remains that Ethical Standard 1.02, on its face, allows any behavior (including violations of human rights) on the part of a psychologist as long as it adheres to the requirements of the law, regulations or other legal authority.
- e. We are concerned that the thirty or so state licensing boards which codify APA’s Ethics Code will not know what to do with a statement from the APA Ethics Committee which says that for some behaviors Ethical Standard 1.02 is not actually accurate.
- f. We are concerned that it places an unreasonable burden on psychologists (now and in the future) to know that in June 2009 the APA Ethics Committee issued as statement that limits the plain meaning of Ethical Standard 1.02.

Given these concerns, even if the Ethics Committee were to make certain changes to its statement (e.g. add cruel, inhuman and degrading treatment and punishment and other human rights violations and delete the reference to only certain named techniques) we believe the statement would continue to be insufficient. Only a change in the language can resolve the problematic interpretations which have arisen with Ethical Standard 1.02.

- 6. In 2005, Council first charged the Ethics Committee to “review the discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code of Conduct and Ethical Standard 1.02, and make a recommendation to the Board of Directors concerning adding the words

'in keeping with basic principles of human rights' to Ethical Standard 1.02.” By August 2008 that review was not done. Thus, eight sponsors from seven Divisions and one state, with approximately 50 Council representative and four members of the Board of Directors as co-sponsors, introduced New Business Item #34E directing the Ethics Committee to not only complete the charge from 2005, but to go a step further and “move forward expeditiously to recommend language to Council to resolve the discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code and Conduct and Ethical Standards 1.02 and 1.03 and make a formal recommendation for immediate action at the August 2009 meeting of Council.”

When we wrote the NBI in 2008 we were aware of all that had happened in APA since the 2005 charge. It was evident to the 60+ sponsors and co-sponsor of the NBI that the needs of the Association could not be met if the Ethics Committee limited itself to making a recommendation about whether or not Ethical Standard 1.02 needed to change. In those three years Ethical Standard 1.02 was studied and scrutinized. As a result it was criticized for containing a loophole, intended or not, that allows psychologists who are faced with an irresolvable conflict between ethics and the law to adhere to the law, regulations or other legal authority, even if it means violating human rights. We continue to believe the needs of our Association and its members call for changes to Ethical Standard 1.02 now, rather than possibly at some later unknown time when the entire Code will be reviewed.

7. We appreciate and applaud the Ethics Committee for its July 2009 report which completes the action directed by Council in 2005. This action, however, does not respond to our main motion and in no way addresses the problem with Ethical Standard 1.02. We urge the Board to recommend that Council approve the attached substitute motion directing the Ethics Committee to propose language which resolves the discrepancy in 1.02. Council and all of APA have waited long enough.

Substitute Motion for NBI #34E

Subject: Continued Council Action to Ensure that Ethical Standards 1.02 and 1.03 can never be used to justify, or as a defense for, violating basic human rights.

Main Motion

Council directs the APA Ethics Committee to propose language to Council that will resolve the discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code of Conduct and the Ethical Standards 1.02 and 1.03 so that these Standards can never be used to justify, or as a defense for, violating basic human rights. This process shall be completed in time for the Ethics Committee's proposed language to be acted on as part of Council's February 2010 meeting agenda;

WHEREAS when Council adopted the 2002 Ethics Code, it was not anticipated or intended that the language of Standards 1.02 and 1.03 be interpreted to mean that any psychologist in any role could use these Standards to justify, or as a defense for, violating basic human rights. Standard 1.02 addresses conflicts between ethics and law, regulations or other governing legal authority. Standard 1.03 addresses conflicts between ethics and organizational demands;

WHEREAS in 2005 Council members learned that the Introduction and Applicability Section of the Ethics code is aspirational and not enforceable. It states: "If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner. If the conflict is unresolvable via such means, psychologists adhere to the requirements of the law, regulations, or other governing authority in keeping with basic principles of human rights." In contrast, Standard 1.02 states, "If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict. If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority." Standard 1.03 states, "If the demands of an organization with which psychologists are affiliated or for whom they are working conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code";

WHEREAS, in 2005 Council directed the APA Ethics Committee to "review the discrepancy between the language of the Introduction and Applicability section of the *Ethical Principles of Psychologists and Code of Conduct* (2002) and Ethical Standard 1.02 and," requested that the Ethics Committee "make a recommendation to the Board of

Directors concerning adding the words ‘in keeping with basic principles of human rights’ to Ethical Standard 1.02”;

WHEREAS it was Council’s intent in giving the Ethics Committee this charge that the Committee consider various approaches and wording in order to resolve the discrepancy;

WHEREAS, in August 2008, the movers introduced New Business Item #34E directing the Ethics Committee to suggest language that would resolve the discrepancy. The main motion suggests, as one possible approach, adding the phrase “in keeping with basic human rights”;

WHEREAS in July 2009 the Ethics Committee issued its response to Council’s 2005 directive in which it noted that “the language of Ethical Standard 1.03 closely tracks the language of Standard 1.02,” and also reiterated a central distinction in the Ethics Code “between the Code’s aspirational sections—the Introduction and Applicability, the Preamble, and the Ethical Principles—and the enforceable ethical standards.” In contrast to the general language of the aspiration sections, language in the enforceable standards “is specific and directive” and sets forth “specific obligations and specific prohibitions on psychologists’ behavior”;

WHEREAS in July 2009 the Ethics Committee acknowledged the discrepancy between the aspirational section of the Ethics Code (Introduction and Applicability Section) and the enforceable section, but did not propose any language to resolve it. Instead the Ethics Committee recommended against adding the one phrase, “in keeping with basic principles of human rights,” to Ethical Standard 1.02 or 1.03;

WHEREAS the July 2009 response does not report that the Ethics Committee considered any other approaches or wording possibilities to resolve the discrepancy other than adding the words “in keeping with basic principles of human rights”;

WHEREAS Council acknowledges and appreciates the Ethics Committee’s work on this issue, however, the pressing need to resolve the discrepancy remains so that Ethical Standards 1.02 and 1.03 can never be used to justify or as a defense for violating basic human rights;

WHEREAS there is no plan, timeline or allocated funds for a revision of the entire Ethics Code;

WHEREAS the Ethics Committee received comments in last year’s Call for Comments about 1.02, including concerns raised about the effects of language changes on disclosure of confidential information in response to a legal demand such as a subpoena or court order, the Ethics Committee should consider these comments as it proposes language to ensure that Ethical Standards 1.02 and 1.03 can never be used to justify or as a defense for violating basic human rights;

WHEREAS the Ethics Committee's June 2009 statement, "No Defense Against Torture," is insufficient because it solely prohibits torture and is neither contained nor referenced in the Ethics Code itself;

WHEREAS according to The Association Rules (2008) Code 20-4.1, titled, Review of the Ethics Code, "The Ethics Committee shall have the responsibility from time to time of initiating a review of the latest formally adopted version of the ethics code or any part of the code and proposing necessary changes or additions. In carrying out such a review, the Ethics Committee may set up such ad hoc committees as it finds necessary;"

THEREFORE BE IT RESOLVED that Council directs the APA Ethics Committee and the other relevant Boards, Committees and constituencies to move forward expeditiously to recommend language to Council that will resolve the discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code of Conduct and Ethical Standards 1.02 and 1.03;

BE IT RESOLVED that the language proposed for Council's action clearly communicate that Ethical Standards 1.02 and 1.03 can never be interpreted to justify or as a defense for violating basic human rights;

BE IT RESOLVED that this entire process be completed in time for the Ethics Committee to make a formal recommendation for proposed language to be acted on as part of Council's February 2010 meeting agenda.