

Ethics Committee  
Public Comment Solicitation Website  
Ethical Standard 1.02  
Call December 2008  
Survey end date 3/16/09

#### Comments (Ethical Standard 1.02)

Posted by: Kirk Heilbrun  
Representing: Individual  
Date Edited: 01/07/2009  
Comments:

The history of APA ethical principles and standards reflects aspirational views in the principles about resolving conflicts between ethics and law, and much more limited language in the enforceable standards. Indeed, the only previous standard on this point (1992) contains the vague proviso to "resolve conflict in a responsible manner." The present question concerns whether to take the aspirational language from the 2002 principle ("in keeping with basic principles of human rights") and add it to the standard. I have very serious concerns about doing so. The structure of our principles historically has been such that psychologists use sources such as "professional materials," "dictates of conscience," and "principles of basic human rights" in helping to guide their actions in a broad sense. The problem with moving such language into an enforceable standard is that it is very hard to determine (for the psychologist or for the ethics committee) what actually needs to be enforced. This becomes a problem particularly in gray-area cases. Considering the following hypothetical. Psychologist A is involved in conducting a sentencing evaluation in a capital proceeding at the request of the defense. He administers several psychological tests in the process. In advance of the hearing, the prosecution subpoenas the raw testing materials. Psychologist A declines to provide them on ethical grounds, citing both test security and the absence of a qualified psychologist employed by the prosecution to interpret these materials. This goes to a hearing; the court, after hearing arguments, rules that Psychologist A must turn over raw testing materials to the prosecution and signs an order to that effect. Psychologist A complies with the order and reasons he has done what is ethically appropriate in pointing out the conflict publicly, making his allegiance to the Ethics Code known, and resolving the conflict between ethics and law by following the lawful court order. Psychologist B, unconnected with the case in any way but aware of these events, files an ethics complaint against Psychologist A on the grounds that his following the law in this case was outside the "basic principles of human rights"--which do not sanction capital punishment. With the proposed additional provision in place in the Ethics Code, this complaint might well be upheld. There are undoubtedly other examples of activities in which psychologists are involved that some would consider to be not in keeping with the basic principles of human rights. There would be the risk of seeing psychologists avoid these (lawful) activities as the only alternative to risking an ethics complaint for something that is not only within the law, but has been within our own ethical standards up to this time.

Posted by: David Hartman

Representing: Individual

Date Edited: 01/07/2009

Comments:

This is a standard that is so vague, it might as well not be amended. Alluding to human rights without an objective standard opens this up to all sorts of "cultural" interpretations; is the standard of "human rights" different in a very poor country versus a First World nation? Is the standard different in a totalitarian regime? I agree with the intent, but in a profession that prides itself on objectivity, this is a remarkably vague revision. David Hartman, Ph.D., ABN ABPP Illinois license 071-003149

Posted by: Frederick Rotgers

Representing: Individual

Date Edited: 01/07/2009

Comments:

In the interest of brevity, I want to echo Kirk Heilbrun's statement from his comment on this website. He wrote: "The problem with moving such language into an enforceable standard is that it is very hard to determine (for the psychologist or for the ethics committee) what actually needs to be enforced." I also agree with David Hartman's comment. This definitional difficulty is the crux of the matter for me. While I believe we can all endorse a goal of upholding "basic human rights", it is not at all clear to me what that phrase actually and precisely means, and encompasses. For example, is it a violation of "basic human rights" for a correctional facility to hold an inmate who is believed (and perhaps may even have demonstrated as much) to be violent, in isolation from all other prisoners? If so, and we prohibit psychologists from working in such a setting where their services may be crucial to preventing exacerbation of already severe mental illness in such an individual, who do we benefit? While the answer to that question is murky, at best, it is clear that we actually harm that unfortunate person who is denied our services because someone on an ethics committee decided that the setting was one in which it was unethical to provide service! Certainly, psychologists work in these sorts of settings every day. Making the language of the aspirational standard enforceable will place psychology on a slippery slope that is likely to result in a dramatic restriction of our ability to provide benefit, a principle equally important to "do no harm."

Posted by: Sholtz Diana

Representing: Individual

Date Edited: 01/07/2009

Comments:

I am pleased that APA is revisiting this part of the ethics code, which in my opinion worsened in 2002. Before that code change, if I had to assert my ethical reason for doing or not doing something, at least I believed that I had my professional association behind me. With the 2002 code, and not just in this one place, it seems to me we have sold out to the attorneys. When there is a true conflict between ethics and the law, it would be much

preferable for APA to work on providing support for those psychologists who adhere to ethical standards even if it gets them in trouble with the law. As the Code now stands, instead we are told to try to resolve things, but, oh, well! if we can't, going along with an unethical law is more important than our ethics! We are a profession because we profess--values, among other things. Therefore, I heartily support changing Ethical Standard 1.02. Just adding the bit about human rights will not fix the above issue, however. We need language to the effect that while psychologists will not be penalized by APA for going along with the law when nothing else is possible, APA supports psychologists who refuse to subjugate their ethics to unjust or inhumane laws (e.g., the therapist who would not give up a rape victim's therapy notes). And then I would like APA to form a task force to determine just how to support them, as well as a concerted effort to educate trial lawyers about our ethics and the reasons for them.

Posted by: thomas boll  
Representing: Individual  
Date Edited: 01/08/2009  
Comments:

the term "basic principles of human rights" undefined, has no specific meaning. its like the word fair and fairness. it means whatever someone saying it who feels aggrieved wants it to. the terms law, regulation and governing authority are specific and referable. whoses basic princples are you referencing? those found in writhings of thomas aquinas, the koran, the st james bible, the geneva conference? without referece to specific list or source its a wide open opportunity for complaint against which there can be no specific defense. not a good idea in any ethics document. thomas j boll

Posted by: Alice Young  
Representing: Individual  
Date Edited: 01/08/2009  
Comments:

I offer the following comments about the proposed language for Standard 1.02. 1. The proposed changes demonstrate valuable ethical issues that inform the work of APA members. 2. The language proposed, however, does not give a clear definition of "basic principles of human rights." As a result, it makes the standard ambiguous and therefore unenforceable. 3. Placing ambiguous in an enforceable part of the Code is not a good idea. 4. Active discussion of these critical issues should continue, and any revisions should take place during the revision period already scheduled.

Posted by: Peter Jaberg  
Representing: Individual  
Date Edited: 01/08/2009  
Comments:

I do not see a problem with the discrepancy between the aspirational statement and ES 1.02; in fact, I think that each statement makes sense in its own context. It is the

responsibility of psychologists (and APA by extension) to protect the public welfare. Governing laws, statutes, and case law are derived from the public discourse and representative government. To suggest that APA standards should trump this public interest in an enforceable way (i.e., a modified 1.02) because of a perceived inadequacy in attending to human rights concerns seems inappropriate. Some incidents of human rights violations are clearly ("black and white") inappropriate and should not be tolerated. However, there are also several situations that occur in which human rights implications are unclear or ambiguous. In such a situation, a psychologist should aspire to attend to the highest consideration of human rights. If laws, statutes, or case law do not represent the highest consideration for human rights, then psychologists (APA, other organizations, etc.) should work to change those laws through the public discourse and representative government. I do not think that it would be appropriate to change 1.02 at this time.

Posted by: Kelly Burkhouse

Representing: Individual

Date Edited: 01/08/2009

Comments:

I am opposed to the proposed change in Ethical Standard 1.02. I believe that we should remain one of the many organizations that allows member discretion in situations where ethics and the law differ. We should not be the only organization that requires our members to break the law when there is a perceived conflict--especially, as others have noted, since the definition of human rights can be controversial. An additional example might be counseling individuals considering abortion--there are certainly respected psychologists who believe abortion is a violation of human rights, while others believe that laws limiting abortion are a violation of human rights. Would this standard then allow both sets of psychologists to be brought up on ethics standards if they practice in accordance with their local laws in guiding women on these issues? There is a dangerous arrogance in thinking we have all the right answers. We have and seek a diverse membership. We should not prohibit our members from following the law if they believe it is the right thing in a given situation.

Posted by: Susan Rebillet

Representing: Individual

Date Edited: 01/10/2009

Comments:

Placing an ambiguous phrase such as human rights without an acceptable definition in an enforceable part of the Code is not a good idea. I support the comments of others who agree with this. Susan Rebillet PhD

Posted by: Koocher Gerald

Representing: Individual

Date Edited: 01/10/2009

Comments:

One important, but neglected issue involves assisted suicide. Some jurisdictions (e.g., Oregon) allow physician assisted suicide under specified conditions that include psychological criteria. Some psychologists may have moral objections to assisted suicide. Other psychologists who work in states that mandate psychologists to protect clients from harm (including self harm) may care for terminally ill clients and become aware of circumstances in which a rational client with a terminal condition voices a plan to end his/her life. I would argue that in such a circumstance the psychologist might ethically decline to engage in mandated reporting or otherwise avoid forcing "psychiatric intervention" on the terminal client.

Posted by: Michael Serra  
Representing: Individual  
Date Edited: 01/11/2009  
Comments:

I am opposed to the proposed change in Ethical Standard 1.02. I find the language of the revision to be rather vague and likely to increase (rather than decrease) conflicts in decision making. Furthermore, I find it objectionable that the language of the revision seems to encourage APA members to break the law rather than to break the ethics code.

Posted by: Robert McGrath  
Representing: Individual  
Date Edited: 01/13/2009  
Comments:

I have spent a good deal of time over the last year thinking about the objections that have been raised to the proposed revision of Ethics Standard 1.02. As a licensed psychologist I have grave concerns about any modification to the Ethics Code that increases the legal burden on clinicians even further, particularly when that burden is worded as vaguely as an obligation to comply with basic principles of human rights. I particularly found the analysis of the issue by the Committee on Legal Issues compelling, and agree that such a clause could easily be used against applied psychologists in legal proceedings. At the same time, I am very disturbed by an "Ethics" Code that permits clearly unethical behavior so long as a governmental entity sanctions that behavior. The authorization of abusive and even torturous interrogation techniques by the U.S. government in recent years highlights the fact that governmental review is not a sufficient bulwark against clearly unethical behavior. In fact, APA Council's own actions contradict Standard 1.02. In adopting a series of resolutions forbidding psychologists' involvement in torture, without exception in light of governmental approval, Council has recognized that there are limits to government as an arbiter of ethically acceptable behavior. I do not think the anti-torture resolutions have ever been tested, but I suspect they unfortunately remain empty sentiments without an enforceable standard that stipulates an obligation to a higher principle than the law. How then to get past this controversy? I suspect we need to look beyond the specific recommendation of a wording change, and to re-evaluate what our Ethics Code has become. It would seem to me that a good deal of the problem lies in the adoption of the Ethics Code as a legal obligation for psychologists in applied settings. I

can understand historically why state authorities considered this a good idea, but with hindsight it is clear that doing so distorts the goals of a code of ethics. For example, if one accepts it is possible for a government to enact unethical laws (that is, unless one believes ethics are defined by law), an ethics code by definition should stipulate the primacy of ethical principles over the law. However, since licensed psychologists by law or regulation are legally mandated to act in accordance with the Ethics Code in many states, the inclusion of such a clause could be perceived as legally mandating them to break the law under certain circumstances. This contradiction highlights the need to distinguish more clearly between legal responsibilities and ethical responsibilities. The current Ethics Code attempts to resolve this dilemma through the distinction between the “aspirational” principles and the “obligatory” standards. In the case of unethical laws or other governmental actions, however, an aspirational model is insufficient as a statement of our commitment to ethics, while a legally binding obligation to break that law exceeds the burden we as an organization should be placing on practitioners. I suspect we need to define a third level of intent, having to do with professional “expectations.” We should not legally oblige psychologists to defy governmental authority, but we should declare it as an expectation of our organization, and reserve the authority as an organization to sanction individuals who act in violation of those expectations. The resolutions on torture would seem to fall within this intermediate class, for example. I’m not sure of the best way to implement this recommendation. One possibility would be to identify certain resolutions of an ethical nature as “sanctionable resolutions,” posted on the same web page as the Ethics Code and attached to all documents presenting the Code, but clearly distinct and intended only for internal action. I anticipate some would consider this recommendation simply a complication of an already complicated situation. I would respond that the good intentions of regulators have already complicated, even distorted, the implications of our Ethics Code. This recommendation is intended to clarify the appropriate level of intent for certain aspects of psychologists’ behavior.

Posted by: david shapiro

Representing: Individual

Date Edited: 01/13/2009

Comments:

While I recognize the need for adherence to basic principles of human rights, that concept at present is too vague to be in any way part of enforceable standards. It would create a variety of practical, legal, and ethical problems if included in enforceable standards. Rather, it should remain in the Ethical Principles section with an attempt to provide some guidance in defining "basic principles of human rights. In addition, phrases such as "taking action to address or resolve the situation" strike me as too vague and subject to too much misinterpretation. APA should look at the Principle E-1.02 of the AMA which speaks of the need to work to change the law if the practitioner feels the law is unjust, as well as the statement that ethical responsibilities supercede legal obligations in "exceptional circumstances of unjust laws" Again, this should be in the aspirational, not the enforceable part of the code. For instance, suggestions that psychologists refrain from having anything to do with institutions that violate human rights would effectively make it unethical for any psychologist to work in a prison.

Posted by: thorayya said giovannelli

Representing: Individual

Date Edited: 01/15/2009

Comments:

While I agree that psychologists should be concerned about "basic human rights", I believe that it may be unwise to include this phrase in the enforceable standards. In my opinion, this phrase is parallel to instructing someone to act with "common sense". What may be "common" or "basic" to one group or one person, may not be for the other group. If the concept of "basic human rights" was operationalized in concrete terms, then this may be more realistic and useful. Without a clearer definition, I am afraid that this may make good psychologists more vulnerable to liability.

Posted by: Michael Gennari

Representing: Individual

Date Edited: 01/16/2009

Comments:

I recommend the language concerning adding the words 'in keeping with basic principles of human rights' to Ethical Standard 1.02" be included in the enforcement language. It is impossible to imagine each and every situation a psychologist may confront, but regardless that psychologist should know the APA will be there to back their actions. By omitting the above language the depth of ethical principles are reduces to the common and often passing tides of laws. History has shown laws come and go, but ethical standards prevail. Failure on the part of APA to show a primary focus as expressed by the above language leaves room for misinterpreting the APA's level of professional ethical aspiration.

Posted by: David Kareken

Representing: Individual

Date Edited: 01/16/2009

Comments:

I don't mind the words "human rights" in the aspirational language, but I object to putting them in the concrete ethical standard. This is over-reaching at a minimum. "Basic Human Rights" by whose sociopolitical context and definition? Libertarians? Socialists? Maoists? Let's keep this focused on the psychologist's obligation to his or her patient and the integrity of the discipline. The ethics code does a fine job of that. Stop there. David A. Kareken, Ph.D., Indianapolis, IN

Posted by: Michael Murry

Representing: Individual

Date Edited: 01/19/2009

Comments:

I oppose the proposed changes. The proposed changes put the practicing psychologist in the potential position to be ethically required to break the law. There is no compelling need for this change and the unintended negative consequences out-weigh any potential benefit.

Posted by: David Ellis  
Representing: Individual  
Date Edited: 01/19/2009  
Comments:

I am very concerned about the proposed change. It is apparent to me that rather than moving toward a position of clarity, the language being used adds a great deal of ambiguity. As a practicing Psychologist, the language could very well leave one in a situation where a violation of law would be expected and could easily be second guessed. This of course could lead to civil action, as well as criminal action, let alone what the insurance industry might say. On the other hand, by upholding the law, one's ethical standing could be drawn into question. I do not believe that this is the type of guidance, or lack there of, that we expect from APA. I urge you to evaluate the utility of the change.

Posted by: Edmund Nightingale  
Representing: Individual  
Date Edited: 01/21/2009  
Comments:

Wiser, and perhaps more thoughtful heads than my own have struggled with the issue as reflected in the comments above. Beyond these comments of individual psychologists, I was particularly struck in my reading of Board and Committee responses by the carefully thought out letter from COLI which outlined dilemmas to be faced by psychologists should vague wording about "human rights" be appended to the current enforceable standard. I believe that the letter sent by CDIP targeted the heart of folk's concerns (proscription of all forms of collaboration with torture) but created its own ambiguity and the kind of opening we noted in the Bush administration's efforts to deny that certain forms of extremely painful procedures fall under the definition of "torture." The real issue, it seems, is how to make psychologists aware that the so-called Nuremburg defense ("I was only following orders") does not trump their obligation to behave in a manner which is moral, respects human dignity and balances the dialectic between human autonomy and social justice.

Posted by: Elizabeth Shepherd  
Representing: Individual  
Date Edited: 01/21/2009  
Comments:

The language utilized is ambiguous and does not assist the clinician in performing the role of a psychologist which is to employ psychological skills for the good of the



patient/client. Clarification in what is the nature of "conflict" between the ethical code requirements and the legal statutes would be a preferable next step for the committee.

Posted by: Stewart Cooper

Representing: Individual

Date Edited: 01/22/2009

Comments:

As a liason to the ECTF task force that wrote the 2002 APA Ethics Code, I oppose the addition of language from the aspirational part to the enforceable standard 1.02. My opinion is based on two facts. First, there is no universal or even broadly agreed upon set of basic principles of human rights. That being the case, it would be impossible for psychologists to clearly understand the specific implications of this phrase and equally hard for the ethics committee to reach decisions on whether the standard was or was not violated when the details of the behavior are not clearly a violation of the standard up to this phrase. In the work done on the 2002 code, efforts were made to not create standards for psychologists that would unduly restrict their activities so long as no harm to the client was likely and the present standard would seem to achieve this.

Posted by: Shoshana Kerewsky

Representing: Individual

Date Edited: 01/29/2009

Comments:

1. Does the current discrepancy between the Introduction and Applicability section of the Ethics Code and Standard 1.02 constitute a problem that necessitates some corrective action? No, because the phrase "in keeping with basic principles of human rights" is aspirational, non-enforceable, and does not describe a universal, objective criterion. It is appropriately present as an aspiration and absent as a standard in the 2002 code. 2. Can psychologists provide specific examples of instances in which the current language of Standard 1.02 has proven inadequate or problematic? No. I imagine, however, that psychologists and attorneys can provide ample counter-examples where non-objective, aspirational language within standards of conduct and enforceable ethics have led to grievances and suits. 3. If the discrepancy has or is very likely to lead to specific ethical or legal problems, what options exist for addressing the discrepancy? I believe that the discrepancy serves as an important example of the difference between aspirational and enforceable statements on the same content, and is useful in this regard. I see it as decreasing ethical and legal problems, not increasing them. If a modification to the current Ethics Code is the best option for addressing the discrepancy, how should the Code be modified? By removing the statement from the aspirational section, not by adding it to the enforceable code. However, I would oppose changing either section of the code. This is not a "discrepancy" but an important distinction between the purposes of the code's sections.

Posted by: Mary Pelton Cooper

Representing: Individual

Date Edited: 02/03/2009

Comments:

To the APA Ethics Committee, It should be clear, given that the membership overrode the ethics committee with an ethics resolution this past year, that the current revision of the APA code of ethics needs to be strengthened. The proposed change would not be adequate. You need to present a more comprehensive change. The AAMFT and the AMA codes are more consistent with the appropriate relationship between law and ethics for professionals in a pluralistic society. Law is often consistent with ethics, but when it differs, the discrepancies can be in direct contradiction to the universal values that are the foundation of our ethics. Law has supported slavery, segregation, and other abusive traditions such as the exclusion of certain groups from the right to marry. We also know, based on our experience with the last presidential administration that one event can turn the direction of law and alter the value focus of a nation in a matter of days. Maintaining a sound code of ethics for professionals protects the public from the professional moral drift that may occur due to the power of highly charged situations. As the AMA code states, "Ethical values and legal principles are usually closely related, but ethical obligations typically exceed legal duties. In some cases, the law mandates unethical conduct." In Chile when the country fell under the rule of a dictator, the physicians appealed to the international community for help because the alternative would have been to accept as their duties, interventions that violated their fundamental ethical principles. This is recent history. According to standard 1.02 American psychologists may now choose to follow the dictator under such circumstances. Why should professionals adhere to a higher moral standard? The office of president is not a professional position. Many lawmakers belong to professional groups, but the positions in the government are not professional positions guided by codes of ethics. Law and ethics are separate entities, and must be maintained as separate levels of considerations for making moral decisions. Ethics as a higher level of moral obligation supersedes law. We need an ethics code that recognizes that higher level of moral authority. While I have your brief attention, I want to point out that we have another serious problem. We now have a statement in the preamble of the APA ethical principles that renders the principles meaningless. That is, the 2002 revision states, "[The Principles are] "aspirational ("strong desire") in nature....[the]intent is to guide and inspire psychologists toward the very highest ethical ideals of the profession. General Principles, in contrast to Ethical Standards, do not represent obligations (???) and should not form the basis for imposing sanctions. Relying upon General Principles for either of these reasons distorts both their meaning and purpose ." I imagine our lawyers were instrumental in bringing about this change because it reflects a legalistic perception of our code. It effectively builds in protection from law suits. The problem is that the code of ethics is not in place to protect psychologists. The code is intended to protect the public by directing our choices as we fulfill our duties of station [as professionals]. The principles are the basis for all of our ethical decisions, especially those for which we do not have a specific standard. Even my undergraduates have learned to use the principles to analyze ethical dilemmas. Should I teach these future professionals that although they need to learn the principles for the test, they will never be obligated to follow them?? The lawyers among you are most likely saying, "yes. We don't want them to be legally obligated." The problem with that stance is that we are now

at sea in making ethical decisions without a strong ethical code to back us up. I agree with Robert McGrath's statement, [that] "We should not legally oblige psychologists to defy governmental authority, but we should declare it as an expectation of our organization, and reserve the authority as an organization to sanction individuals who act in violation of those expectations." We need APA ethicists who are primarily trained in ethics, not in law. We need leaders who have earned a PhD in Ethics along with a Doctorate in Psychology. Our current Director of Ethics clearly has done his homework. I see the literature in his column even though he does not cite the resources. However, given his opposition to the referendum this past year and his choice to avoid a thorough, nuanced analysis of the torture dilemma when it arose, I believe he did not serve the memberships well at all. Mary Pelton Cooper, PsyD Licensed Psychologist and Associate Professor, Member of APA, MPA, Division 35, and Psychologists for Social Responsibility Marquette MI, 49855

Posted by: carmella schultes  
Representing: Iowa Psychological Association  
Role in Group: Executive Director  
Members in Group: 275  
Date Edited: 02/12/2009  
Comments:

Re: Comment 1 on point #5, I agree with striking the word "resolve" (see 3.), using only the word "address" or its equivalent. I also support any verbiage modifications that generally support member discretion throughout all the readings in any new draft. This allows a member who knows the nuances or particulars of a 'conflict' between ethics and law to exercise judgment and follow the law or code as his/her conscience requires. Re: Comment 10, I would also like the APA Ethical Standards to provide additional clarification re: how to provide mental health information over the internet, and further guidelines on client/therapist communication and therapy done on the internet.

Posted by: Ronald Nelson  
Representing: Individual  
Date Edited: 02/21/2009  
Comments:

I would recommend that Ethical Standard 1.02 not be revised. I agree with The Committee on Legal Issues that the concept "basic principles of human rights" is ambiguous. I agree with others who share the concern that the addition of this wording could require a psychologist to violate the law in response to a vague, unclear concept. Ronald Nelson, PhD Cedar Rapids, IA

Posted by: Kay Frances Schepp  
Representing: Individual  
Date Edited: 02/24/2009  
Comments:

Clarification of the Ethics Code is critical to its correct use. I urge positive consideration of the suggestions regarding human rights in 1.02 and/or .03. As far as clarity goes, this comment website seems unnecessarily convoluted. Kay Frances Schepp

Posted by: Greenberg Lyn

Representing: Individual

Date Edited: 02/25/2009

Comments:

I share the concerns that many have expressed re the addition of vague, undefined language to our code of ethics. A psychologist who conducts a child custody evaluation will certainly be perceived as "doing harm" to the parent that is not favored in his/her recommendations, just as a psychologist who writes a recommendation adverse to a student or applicant will be perceived as doing harm to that person. Nor do I think it is tenable to commit APA to a position of unequivocally supporting people who violate the law, because the psychologist is exalting his or her personal definition of ethics over other obligations including, potentially, others' rights. I could imagine such language being used to justify conduct that many of us would consider to be neither ethical nor legal. I also share the concern that the phrase "principles of human rights" is undefined, and the implications that would have. At the same time, I wonder if it is possible to craft more targeted language, to the effect that nothing in 1.02 justifies a psychologist participating in the torture or inhumane treatment of anyone, as defined in the resolutions passed by the APA council. A more specific language change might address the specific problems that gave rise to this proposal, without affecting so many other areas of practice. The proposed solutions seem too imprecise to be workable, but there is reason for concern that we ended up in a situation where we, as an organization, were perceived publicly to have supported the use of torture. We may never know all of what happened at the detention sites, but enough reports have emerged to make it worth examining what we could do, or have done, better.

Posted by: stephenson stephenson

Representing: Individual

Date Edited: 02/26/2009

Comments:

Addng "in accordance with basic principles of human rights ' to the enforceable standards puts psychologists in controversial situations where after complying with the current standards they are legally ordered of comply at risk of being ethically challenged by those who disagree with the stance of legal authority. The asperational intent is well intentioned but lack of clarity and objectivity and the possibility of those trying to advance other agendas makes the phrase highly problematic for psychologists in the real world. I do not see where adding the phrase does anything except make a statement unless the intent is to require civil disobedience of laws or rulings with which someone disagrees.

Posted by: Judith DeVito

Representing: Maryland Psychological Association

Role in Group: Executive Director

Members in Group: 1250

Date Edited: 02/27/2009

Comments:

February 24, 2009 The Maryland Psychological Association (MPA) Board of Directors and the MPA Ethics Committee reviewed and deliberated over the issues and questions raised in the Call for Comments and unanimously agreed that the discrepancy between the Introduction and Applicability section of the Ethics Code and Standard 1.02 does NOT constitute a problem that necessitates corrective action. In fact, we believe that it would be detrimental to make suggested changes at this time. The central point of our opinion focuses on the following: despite the useful guiding documents produced by the APA including the PENS Report, the Resolution Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment and the Reaffirmations of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as "Enemy Combatants," there is not a clear, definitive, and operational definition of "basic principles of human rights" that can be appropriately referenced in an enforceable standard. Though aspirational statements are often somewhat broad, vague, and inexact, enforceable standards must be operationally defined and easily understood without need for interpretation. Furthermore, the implications of modifying the Ethical Principles of Psychologists and Code of Conduct (the Ethics Code) without clarification of the phrase, "basic principles of human rights" – especially without following standard protocol for revision and modification of the Ethics Code – are immense. Doing so would render the term free for interpretation by an enormously broad range of people in immeasurable contexts over an indefinite period of time. For example, how would stakeholders of either side of the "Pro-Choice/Pro-Life" abortion rights debate define "human rights?" Could it be a violation of human rights to question and/or limit individuals' freedoms temporarily by certifying them for involuntary admission to protect themselves or others from harm? Codification of standards without clear and concise definitions of terms leaves all psychologists vulnerable to a variety of definitions of "human rights." In summary, MPA strongly urges APA not to attempt to resolve the complex controversies relating to these provisions by adding vague terminology to an enforceable standard. MPA further urges APA to resist efforts to circumvent the normal process for modifying the Ethics Code; there are no exigent requirements necessitating such a controversial action. Lastly, we believe there are some differences of opinions that should continue to be debated without attempts to impose individual beliefs on the whole membership. We thank you for your request for comments. Kathryn Seifert, PhD., President, MPA; and Michael Heitt, PsyD., Chair, MPA Ethics Committee

Posted by: Edward Tiller

Representing: Individual

Date Edited: 02/27/2009

Comments:

I would suggest adding after the words "legal authority" (See also Standard 3.04). This reference would indicate that in complying with law, regulations or other governing legal authority the psychologist is obligated to avoid harming others and to minimize harm where it is foreseeable and unavoidable. I think this might address the concerns many psychologists have had in recent years regarding our role in the governments use of tortuous activities.

Posted by: BeeEng Soh

Representing: Individual

Date Edited: 02/28/2009

Comments:

Comments regarding Standard 1.02 Conflicts Between Ethics And Law, Regulations, Or Other Governing Legal Authority The questions to be considered include: 1. Does the current discrepancy between the Introduction and Applicability section of the Ethics Code and Standard 1.02 constitute a problem that necessitates some corrective action? No, the current discrepancy between the Introduction and Applicability section of the Ethics Code and Standard 1.02 does not constitute a problem that necessitates some corrective action. This could be justified as follows: (i) Standard 1.02 is enforceable; the phrase "in keeping with basic principles of human rights" is absent from the enforceable standard. (ii) The primary goal of Ethics Code is to ensure "the welfare and protection of the individuals and groups with whom psychologists work." 2. Can psychologists provide specific examples of instances in which the current language of Standard 1.02 has proven inadequate or problematic? Scenario A psychologist is seeing a five-year-old boy who was brought to therapy by his father. After five sessions, you received a phone call from the boy's mother, who tells you that she is the custodial parent, and that she does not want her son seeing you for therapy. The psychologist believes that it is in the boy's best interest to continue psychotherapy. This example would involve a conflict between ethical and legal obligations. The ethical obligation is to serve the best interests of the child, but legally, the psychologist cannot proceed with psychotherapy if the custodial parent does not give you consent to do so. The Ethics Code is instructive in this situations: Standard 1.02 states that "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." Thus, the psychologist could not just terminate without attempting to advocate for the patient; the psychologist also could not continue to treat the minor without his mother's consent, because violating the law is not consistent with resolving the conflict in a responsible manner. The best action for the psychologist is to explain to the custodial mother why immediate termination could harm her son and urge her to let the psychologist continue treating the boy for a few more sessions. In this situation, the current language of Standard 1.02 has proven adequate if the custodial mother agrees to it . Otherwise, if the custodial mother insists that the psychologist has to stop seeing her son immediately, then Standard 1.02 would have proven inadequate. 3. If the discrepancy has or is very likely to lead to specific ethical or legal problems, what options exist for addressing the discrepancy? The options exist for

addressing the discrepancy include: (i) Forming peer reviews to gain insight. (ii) Obtaining information on alternatives for resolving conflicts occurred. 4. If a modification to the current Ethics Code is the best option for addressing the discrepancy, how should the Code be modified? The Standard 1.02 should be modified as follows: "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 cannot be resolved via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority, even though it might mean violating a law or institutional regulation or the Ethics Code. If neither law nor the Ethics Code resolves the conflict, psychologist may seek consultation with psychologists' peers or national organizations (such as the APA and the APA Ethics Office). Alternatively, psychologists may also work to change the laws so that such conflicts do not occur." References APA Ethics Website section on Ethical Standard 1.02, titled "Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority. Nagy, T. F. (2005). Ethics in Plain English: An illustrative casebook for Psychologists. Second Edition. American Psychological Association: Washington, D. C. Bruce, E. B., et al. (1990). Professional Liability and Risk Management. American Psychological Association: Washington, D. C. Academic Review (2008): Preparation made easy - Psychology, Revision Volume.

Posted by: Jane Tillman

Representing: Division 39

Role in Group: Chair of the Ethics Committee

Members in Group: 4000

Date Edited: 03/06/2009

Comments:

Statement from Division 39 Lead Author: Frank Summers, PhD; Contributing Authors: Laurel Bass Wagner, PhD and Mary Beth Cresci, PhD 1. Does the current discrepancy between the Introduction and Applicability section of the Ethics Code and Standard 1.02 constitute a problem that necessitates some corrective action? Principle 1.02 was inserted into the ethics code in 2002 in an effort to resolve the problem of psychologists working in the court system who might find themselves in conflict between the principles of the ethics code and court mandates. There is no question that 1.02 was well intentioned and undoubtedly helped the members of the profession it was intended to benefit. Unfortunately, 1.02 has had unintended effects that warrant its modification. According to 1.02, if the psychologist is unable to resolve a conflict between "law, regulations or governing authority," on the one hand, and the APA ethics code, on the other, psychologists may adhere to the former. The problem is that this provision exculpates psychologists who act in an unethical manner if they can claim they are following orders. The aspirational Introduction and Applicability section of the ethics code would seem to resolve this problem by qualifying non-compliance with the phrase "in keeping with the basic principles of human rights." The problem is that the enforceable part of the code does not include this phrase, an omission that leaves open the possibility of psychologists choosing to comply with authority in opposition to the ethics code in a way that does not accord with human rights. It is this omission that warrants a revision of 1.02. As the code

now stands, it is acceptable for a psychologist to abuse a patient, client, or research subject, thus violating the ethics code, if under a superior that authorized, expected, or ordered such behavior. Because abusing others in a professional role, whether as a clinician, consultant, or researcher, violates the APA ethics code, Principle 1.02 essentially legitimizes ethical transgressions.

2. Can psychologists provide specific examples of instances in which the current language of Standard 1.02 has proven inadequate or problematic? There are many reported instances of psychologists being ordered to compromise the principles of the APA Ethics Code. Those psychologists cannot be disciplined for their ethical violations because 1.02 legitimizes their behavior even though it violates the ethics of the profession. Psychologists have been involved in consulting roles at the Guantanamo Bay Detention Center where the conditions of confinement and the methods of interrogation violate international law as well as the APA Ethics Code. For example, the Standard Operating Procedure includes putting detainees in solitary confinement and even sensory deprivation, procedures that constitute torture under international law. It has been documented that confidential health records have been compromised and torture methods used in interrogations in which psychologists have been consultants. It has been reported that a psychologist who is a member of APA consulted on the torture of Mohammed al-Qahtani, and may have been present during some of the torture. Another psychologist allegedly ordered the torture of a 14-year-old boy and then took the Fifth Amendment at the military hearing on the case so she did not have to incriminate herself. In addition to the Guantanamo situation, in the Iraq War it has been reported that psychologists have been ordered to change a soldier's diagnosis so that he or she can return to the battlefield. On the basis of 1.02 none of these psychologists is guilty of an ethical violation because they are "adhering to the requirements of the authority." Additionally, in a document entitled "Providing Psychological Support for Interrogations" (this was provided by Morgan Banks to the PENS TF and is marked "Draft Do Not Distribute") the very first sentence under the heading "The Balance of Law, Duty and the Ethics Code" reads: "The law that governs the active duty military psychologist is the United States Constitution, Uniform Code of Military Justice (UCMJ), and applicable regulations of the branch of service. The Ethics Code is always subordinate to the law and regulations." This is a very clear message to military psychologists that ethics are subordinate to laws and regulations. The document goes on to outline the steps a psychologist takes (as written in 1.02) to resolve any conflict between ethics and law and regulations. But, to start out the section by saying ethics are always subordinate to the law and regulations is a twisting of the meaning of 1.02 and highlights why 1.02 must be changed.

3. If the discrepancy has or is very likely to lead to specific ethical or legal problems, what options exist for addressing the discrepancy? At this point there are no options. The only way to resolve the conflict between the aspiration in the Introduction and Applicability section and the enforceable principle 1.02 is to change the enforceable language to accord with the Introduction and Applicability section. See below.

4. If a modification to the current Ethics Code is the best option for addressing the discrepancy, how should the code be modified? Principle 1.02 should be modified to include the phrase "in keeping with the basic principles of human rights." Granted the phrase "basic principles of human rights" is vague, but the fact is that it is the aspirational language of the APA Ethics Code and there are international agreements on human rights that can be used as criteria. We suggest using



the International Covenant on Civil and Political Rights (ICCPR) ([http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)) because it is a clear, comprehensive, internationally recognized treaty to which the United States is a signatory and has been given meaning by many courts. Using this standard would close the loophole in 1.02 as it now stands while allowing psychologists in courts or other settings to comply with governing bodies as long as they do not violate rights to which the United States is already committed. In addition, it would bring the Ethics Code in line with the 2008 referendum. The ICCPR would then serve as a guide to resolving ethical conflicts by providing a standard that would limit the extent to which following governing authority is permitted under the Ethics Code. By including this language, the enforceable section accords with the aspirational section. There would be no possibility for a psychologist to defend human rights violations on the basis of compliance with authority. The psychologist who receives orders, whether from the court, the military, or any other institution, may comply with those orders as long as basic human rights are observed. Using this standard would not be a problem for forensic psychologists who can continue to follow "governing authority" as long as doing so does not violate human rights as defined by ICCPR, a document which the United States is obliged to follow. If those orders violate human rights, the psychologist would need help. Therefore, the ethics code should include language that brings the APA to his or her defense. Any psychologist ordered or expected to violate human rights as defined by the ICCPR would go directly to the APA ethics committee, which would then be bound to defend his or her behavior.

Posted by: Martha Davis

Representing: Psychologists for an Ethical APA

Role in Group: member of Change 1.02 study group for PEAPA

Members in Group: 500

Date Edited: 03/07/2009

Comments:

4. If a modification of the current Ethics Code is the best option for addressing these problems, how should the code be modified? Because it has been four years since a modification of 1.02 was mandated by the APA Council of Representatives, the question is not whether to modify 1.02 but how to do it well as soon as possible. We recommend the following: a) Delete "if the conflicts are unresolvable through these means, then the psychologist may follow the law, regulations, or other governing authority." This clause should be stricken immediately from both the aspirational and enforceable sections of the EC no matter what other changes are made. The addition "provided adherence does not violate basic human rights" in the Introduction would be deleted as it no longer has a clause to qualify. The new 1.02 would read: "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." We believe this is enough and puts the emphasis back where it belongs, working on resolution of the conflict. b) For consideration during the next Standard Revision: addition of a clause that privileges Ethics over Law in a conflict. If a more definitive Standard is needed, then add the following to the new 1.02: "If the conflict is unresolvable via such means, psychologists adhere to the Ethics Code."

According to the web #7 COFI memo and the web document #8 Table there is no precedent for this Standard, but we find errors in the Table. For example, the National Association of School Psychologists is listed as privileging Law over Ethics in a conflict, but in the clauses quoted from it, Ethics supercedes Law. In the #8 Table, we see two organizations that explicitly privilege Ethics over Law and four that implicitly support it. It would be instructive to know if this Standard has proven feasible and useful to these professionals. Because more research is needed, we propose this Standard be considered in the next EC Standard Revision. c) Immediately delete the 1.03 qualifier: "to the extent feasible." This clause is too vague and conducive to serious misuse. If it is not feasible to delete it, then the entire 1.03 should be deleted immediately and whatever problems it was designed to address should be referred to a Standard Revision of the Ethics Code. d) Immediately add an omnibus protection Standard to the Ethics Code. We propose that the Council immediately act on inclusion of a new Standard placed in both the aspirational and enforceable sections like the following: "No Standard of the Ethics Code can be used to justify violations of human rights or Standard 3.04, Avoiding Harm." This would require criteria for defining human rights and for this we recommend the International Covenant on Civil and Political Rights (ICCPR). Ratified by the U.S., ICCPR is a very clear, comprehensive treaty that has been well developed and given meaning by many courts and experts. We understand that "basic" as in "basic human rights" is unnecessary and not useful, so we have omitted it. The proposed protection Standard would help close loopholes and prevent misuse of any Ethics Standard, and would bring the Ethics Code in line with the referendum passed in Fall 2008. It would also be a guide to resolving difficult conflicts by specifying that the psychologist should not choose to follow law, regulations, and governing legal authority if doing so violates the new protections Standard and the ICCPR. Address the ethical challenges of psychological research and consulting that serves national security in the next Standard Revision of the Ethics Code. The PENS Task Force recommendations failed in part because they were hastily made by a very limited group. The ethical problems of the burgeoning area of "national security psychology" warrant the full revision process and consideration of additional Standards such as Canadian Psychological Association Ethics Code 1.6: "Refuse to advise, train, or supply information to anyone who, in the psychologist's judgement, will use the knowledge or skills to infringe on human rights." In conclusion, these proposed changes would fulfill the directives of the Council of Representatives and correct discrepancies and problems with 1.02 and 1.03 by August 2009 as per the Council Resolution. Separating domestic forensic psychology concerns from those of psychologists serving the military and intelligence community makes it possible to address remaining questions appropriate for the Specialty Guidelines for Forensic Psychologists during its current revision process, while leaving new and difficult ethical questions of national security psychology for the next Ethics Code Standard Revision process. In total these changes, combined with implementation of the referendum, could go a long way to restoring the damage to trust in our profession that has followed application of Code 1.02 and the PENS policy. Martha Davis John M. Stewart Dan Aalbers Frank Summers Steven Benson Ed Tejirian Brad Olson and Steven Reisner Bryant Welch for Psychologists for an Ethical APA (PEAPA) March 7, 2009

Posted by: Stephen Benson

Representing: Individual

Date Edited: 03/07/2009

Comments:

I support the recommendations of the PEAPA Memorandum. The part of 1.02 that says "If the conflicts are unresolvable through these means then the psychologist may follow the law, regulations, or other governing authority" must be deleted from the aspirational and enforceable parts of the Ethics Code. Any reference to human rights must state clearly where these rights are so defined so that they are not left ambiguous. I also urge that the Ethics Committee must ensure that no Standard of Ethics Code can be used to justify violations of human rights or of standard 3.04, which is called Avoiding Harm.

Posted by: John M. Stewart

Representing: Individual

Date Edited: 03/07/2009

Comments:

PEAPA Memorandum on Revision of Ethics Code 1.02 submitted March 7, 2009 1. Should there be modification of Ethics Code 1.02? We thank the APA Ethics Committee for ensuring the transparency of the review process by making 1.02 documents and the comments of governance groups and members available for study on their webpage. We trust that our feedback is important for the resolution of this controversy. However, we are concerned that, as framed, the Call for Comments appears to limit recommendations to either supporting no change or adding phrases that qualify 1.02. There are at least two other choices regarding 1.02: deleting the phrase, "If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority" OR reversing it to state that the Ethics Code (EC) should supercede law/regulations/governing authority in a conflict. The August 2008 Council Resolution directed the Ethics Committee to resolve discrepancies and problems with Codes 1.02 and 1.03, and take measures to insure that 1.02 and 1.03 can "never be interpreted to justify violations of basic human rights." The Resolution does not rule out deleting clauses from 1.02 and 1.03 or adding clauses elsewhere in the EC. We agree with the many governance groups (1.02 webpage #7 documents) that urge modification of Code 1.02. But we feel that the changes commonly discussed do not adequately correct the problems. One proposal adds the following phrases to 1.02: "provided that psychologists do not violate Ethical Standard 3.04, Avoiding Harm" and "Standard 1.02 can never be used to justify violations of basic human rights." This is far better than no change, but it still keeps the most problematic part of 1.02, "...may adhere to the requirements of the law, regulations, or other governing legal authority." It would be better to delete this phrase from the Ethics Code (in both enforceable and aspirational sections) and add a new standard on protecting human rights and Avoiding Harm that stands alone and would apply to all Codes. Some commentators argue that inserting references to "human rights" as defined by international instruments is too ambiguous=20and problematic. For example, the Committee on Legal Issues (COLI, Dec 12 letter on the #7 webpage list, p. 3) states "if the law determines that, in order to 'secur[e]...respect for the freedoms of others,' someone should be subjected to harsh interrogation

techniques or even tortured, the [Universal Declaration of Human Rights] would seem to allow it.” This argument is seriously in error. The Declaration’s prohibition, as interpreted by the UN Convention Against Torture (UNCAT) and its extensive jurisprudence, is absolute (as are the APA Resolutions Against Torture of 2006, 2007 and the amendment of 2008). Without intending to do so, COLI has pointed out precisely why 1.02 must be changed to align with US ratified international laws such as UNCAT. Otherwise psychologists remain susceptible to violating ethics by obeying unethical laws, regulations or orders or by following tortured domestic interpretations of international law. If U.S. government officials (military, intelligence, law enforcement) determine that trying to secure the freedom and safety of Americans requires harsh interrogation methods, then according to 1.02 the psychologist working for them may follow orders to assist such measures. We support adding the human rights and 3.04 clauses to the Ethics Code but in a different way. We do not believe adding them to 1.02, as it reads now, would be a sufficient check against its misuse. For example, where interrogators might use stress-inducing or deception techniques that do not violate international law, these methods do violate the APA Ethics code (cf “False Flag” and “Fear Up” procedures, U.S. Army Field Manual). Similarly, while the standard operating procedures for interrogations and confinement at Guantánamo Bay may not have violated military law in force at the time, these were in violation of the APA ethics code. On the surface Code 1.02 seems clear and practical, but in reality it is a dangerously blunt instrument that exacerbates rather than clarifies conduct questions as we will discuss in parts 2 and 3. Qualifying 1.02 with the proposed human rights and 3.04 phrases is not enough to correct its ambiguities and prevent its misuse. Therefore, we urge deletion of “If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority” from all parts of the EC and will propose alternative ways of addressing law/ethics conflicts in parts 3 and 4. Part 1 of PEAPA Memorandum submitted by John M. Stewart, Memorandum by Martha Davis John M. Stewart Dan Aalbers Frank Summers Steven Benson Ed Tejirian Brad Olson and Steven Reisner Bryant Welch for Psychologists for an Ethical APA (PEAPA) March 7, 2009

Posted by: Aalbers Dan  
Representing: Individual  
Date Edited: 03/07/2009  
Comments:

Part 2. Can psychologists provide specific examples of instances in which the current language of Standard 1.02 has proven inadequate or problematic? On its 1.02 webpage, the Ethics Committee frames the issue in terms of conflicts between Ethics and Law, but recent objections to 1.02 do not concentrate on situations in which there is a conflict between the EC and the Law, if by law is meant federal or state laws unrelated to national security. Code 1.02 reads that in a conflict, “...psychologists may adhere to the requirements of the law, regulations, or other governing legal authority.” (bold italics added). Judging from their adoption dates and wording, a few organizations have adopted APA's 1.02 verbatim. Apart from these, however, the professional Ethics Guidelines reviewed in webpage section #8 refer only to “law,” and not “regulation or other governing legal authority.” These words increase the scope of 1.02 tremendously, and the

accusation that 1.02 is a version of the “Nuremburg defense” stems from these additional terms, e.g., you may follow orders [of a law enforcement officer, military commander, CIA agent, governor, mayor, indeed any government official] in a conflict. The Table in webpage document #8 categorizes APA 1.02 under psychologist’s discretion because it says the psychologist may follow law over the EC in a conflict, not should or must. This groups it with the guidelines that advise the psychologist to attempt a resolution, but do not specify what to do if the conflict cannot be resolved (which is what APA Ethics Code 1.02 said before it was amended in 2002). Apparently, “may adhere” implies it is also ok to not adhere to orders, so Standard 1.02 is categorized as leaving the decision to the discretion of the psychologist. However, if both options were equally acceptable, there would have been no need for the 2002 revision. Adding only the "may adhere" clause to the enforceable section of the EC signals a bias in favor of following law, regulations and other governing legal authority over EC in a conflict. COLI asserts that “although concerns have been expressed recently about psychologists working in extra-legal detention settings, we have seen little evidence of a profound problem and are not aware of situations in which psychologists have been ordered to engage in unethical behavior.” (p. 5). We take strong exception to such a statement. The 2005 investigations of the Office of Inspector General and the Army Surgeon General describe how psychologists routinely have been ordered to use their clinical training to devise coercive ways to “press detainee buttons” and oversee incarceration punishments of recalcitrant prisoners. In televised hearings in June 2008, the Senate Armed Services Committee chairman specifically documented the role of psychologists in systematic abuse, and in November the formal report on its torture investigation received nationwide attention. The Senate Armed Services Committee has determined that psychologists played a significant role in the implementation of orders to apply “reverse-engineer” SERE (Survive, Evade, Resist, Escape) techniques meant to steel captured US soldiers against torture and apply them to “enhanced” interrogation of detainees. Credible accounts and rigorous government studies show that under orders psychologists and psychiatrists have devised, assisted, and trained army and contract interrogators in coercive and abusive methods of interrogation and incarceration at Guantanamo, Abu Ghraib, Bagram and other detention sites. COLI continues: “Assuming, arguendo, that there is a profound problem, there is no evidence that this problem is widespread.” (p. 5) Although part of top secret operations, there is now credible evidence from government investigations that a disturbing number of psychologists have abetted detainee abuse in what is an established program. For example, two are currently under Senate subcommittee investigation for involvement in torture. A third, the psychologist accused of abusing a teenage prisoner at Guantanamo Bay, refused on Fifth Amendment grounds to testify at the detainee's military commission trial. Complaints against a fourth psychologist were submitted to the Ethics Committee over two years ago, but have produced no action despite serious documentation on his involvement in detainee abuse. A fifth psychologist cited in the Senate Armed Services Committee hearing for abetting "enhanced" interrogation methods is one of the highest ranking psychologists in the U.S. Army and a key member of the Psychological Ethics and National Security (PENS) Task Force that led to APA support for psychologist involvement in detainee interrogations. These psychologists are not rare lone wolves. Investigations indicate that others have been involved in abusive detainee interrogations as well. Nor can they be marginalized as ‘bad apples.’ Indeed they

have executed a program that was legal according to Presidential findings and memoranda by the Secretary of Defense. The Department of Defense and CIA continue to use psychiatrists and psychologists this way, despite vigorous protest from organizations such as the American Psychiatric Association and World Medical Association. To our knowledge, the five psychologists are still employed by the CIA or U.S. Army, and none has been investigated by the APA or their state ethics committees or licensing boards. The APA has yet to condemn the abusive standard operating procedures devised and implemented by psychologists. Code 1.02 has proved useless for oversight, professional guidance or legal defense. On the contrary, it permits the following of regulations that might otherwise be deemed unethical, and practices that harm prisoner, soldier, and public trust in military health care in general and the psychology profession in particular. The problem spreads well beyond detention centers. Code 1.02 can be used to permit work by psychologists in secret intelligence operations and research that involves deception without debriefing, stress procedures, violations of confidentiality, lack of informed consent, and other forms of serious harm to prisoners, patients and research participants that are prohibited by the EC. We do not know the extent of such practices or whether Code 1.02 or the PENS policy can provide them cover in fact. However, there are reports (e.g. American Journal of Bioethics, May 2007) that "psychologists have been conducting highly controversial and potentially harmful neuroscience experiments for national security applications, and it is not clear that the APA Ethics Committee, civilian Institutional Review Boards, or state licensing boards provide adequate oversight for this and are addressing the problems. Part 2 submitted by Dan Aalbers, Memorandum written by Martha Davis John M. Stewart Dan Aalbers Frank Summers Steven Benson Ed Tejirian Brad Olson and Steven Reisner Bryant Welch for Psychologists for an Ethical APA PEAPA) March 7, 2009

Posted by: Ruth Fallenbaum

Representing: Individual

Date Edited: 03/07/2009

Comments:

Delete the sentence: "If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority."

This sentence is an embarrassment to our profession and the longer it remains in the ethics code, the more compromised our professional code of ethics becomes. Do not qualify it, modify it, or prettify it. Simply delete.

Posted by: David Byrom

Representing: Individual

Date Edited: 03/08/2009

Comments:

I unequivocally support the PEAPA Memorandum on Revision of Ethics Code 1.02 submitted March 7, 2009.

Posted by: Thomas Greenspon

Representing: Individual

Date Edited: 03/08/2009

Comments:

I urge APA to support changes to the current Ethics Code such as those suggested by Psychologists for and Ethical APA. I believe that as health care professionals concerned with emotional well-being and personal dignity and integrity, we must stand unequivocally for the protection of human rights, and against torture and inhumane treatment, whatever the political and legal ramifications of this might be. Working to resolve such political and legal ramifications is vital, but resisting harm should be primary.

Posted by: William MacGillivray

Representing: Individual

Date Edited: 03/08/2009

Comments:

I believe the ethical standards must include language that emphasizes our duty to respect basic human rights as a foundation of ethical behavior and that the standard concerning human rights has been clearly articulated by APA policy call for adherence to definition of basic human rights as set forth in the Geneva Convention articles.

Posted by: Ann Clarkson

Representing: Individual

Date Edited: 03/08/2009

Comments:

I support the PEAPA Memorandum of Revision of Ethics Code 1.02 as submitted. It is a carefully thought out statement which will improve the ethical statements of the APA. The APA should support ethical behavior, which is often, but not always consistent with legal authorities.

Posted by: Sergio Rothstein

Representing: Individual

Date Edited: 03/09/2009

Comments:

I support the PEAPA memorandum. Parts 1, 2 and 4 are on this Comments site. Due to the length restriction, I can only submit an abridged version of Part 3, but believe it contributes greatly to the debate. The Memorandum was written by Martha Davis. Dan Aalbers, Steven Benson, Brad Olson, Steven Reisner, John M. Stewart, Frank Summers, Ed Tejirian, and Bryant Welch for Psychologists for an Ethical APA (PEAPA). PART 3. If the discrepancy has or is very likely to lead to specific ethical or legal problems, what options exist for addressing the discrepancy? Code 1.02 was amended in 2002 to address problems emerging within forensic psychology practice in the U.S., and arguments against changing 1.02 are usually made by forensic psychologists. But in 2005, it was

applied to psychologist involvement in military interrogations of detainees. The Psychological Ethics and National Security (PENS) Task Force maintained that this work was ethical in part because it was comparable to ethical forensic psychology practices in the U.S. However, forensic psychologists do not supervise criminal interrogations, and there are profound differences between national security psychology and psychological services to domestic law enforcement and U.S. judicial and correctional systems. The forensic psychologists who consult with the intelligence community are working under very different rules. The law/ethics problems facing civilian psychologists seem manageable; the authority/ethics problems facing psychologists working for the military or intelligence community are of another order altogether. Given the transparency, options for redress, and safeguards of the U.S. legal system, many civilian law/ethics conflicts can be reconciled without violating either the Law or Ethics Code. Also, the APA Ethics Code and the Speciality Guidelines for Forensic Psychologists (SGFP) outline in detail how psychologists are to balance the rights and well-being of the person treated or evaluated against the safety and needs of the court, public agency, prison, school, etc., without resorting to Code 1.02. For the difficult cases that remain, Code 1.02 is far too blunt and vulnerable to misuse. An extensive review process is needed to develop more refined and constructive guidelines for the difficult law/ethics conflicts.... Legitimate research and training must be protected. But Code 1.02 supports military psychologists advising detainee interrogations, a practice that has set a terrible precedent. Fear of restricting practice cannot overwhelm our obligation to address the serious negative consequences of “deputizing” psychologists to intervene in, investigate or help prosecute actual cases like this. When there were concerns that the Referendum would jeopardize ethical psychologists working in hospitals, correctional facilities and rehabilitation programs (see Report of the APA Presidential Advisory Group on the Implementation of the Petition Resolution, Dec 2008), the boundaries of what the referendum covered were made clear enough that the referendum was ratified by Council. Any such concerns about changing Standard 1.02 can be allayed as successfully. Fortunately, for cases in which a psychologist’s practice, assessment, consulting or research interfaces with the U.S. judicial, law enforcement or correctional systems, there is a timely way to work on difficult law/ethics conflicts. Revision of the APA Div. 41 Speciality Guidelines for Forensic Psychologists (SGFP) is now in progress. Which brings us to domains where existing guidelines are inadequate and the judicial and security system has little transparency, options for redress, or robust protections for the individual: e.g., military operations and top secret research serving national security concerns. No way has been established to provide ethics counsel and communication between civilian Ethics officials and psychologists working in a top secret military operation or intelligence research project. Given the power of the Commanding Officer, the psychologist who refuses an order can be forced to take an undesirable reassignment or resign his or her commission immediately, and the APA has no power to prevent this. Because security rules bar the officer or researcher from communicating with civilians about what is happening, he or she cannot get outside moral support or advice. The only true support that the APA can offer these psychologists resides in the influence the APA has on state licensing given its role as definer of good practice standards, because the U.S. Department of Defense requires that psychologists maintain their licenses in good standing. Code 1.02 effectively deprives the military psychologist of a powerful



pushback: “With respect, sir, I can’t do that as it violates my Ethics Code and jeopardizes my psychology license.” We count at least 13 Ethics Standards that are violated by the US Army program in which clinicians are assigned to assist detainee interrogations. Code 1.02 exempts these psychologists from adhering to 1.05 Reporting Ethics Violations (security prohibits communication); 2.01 on working outside own’s area of competence (no training in interrogations, the emergency exception pertains only to mental health services); 3.04 Avoiding Harm, 3.05 Multiple Relationships (supposedly protecting detainees while helping interrogators be effective), 3.7 on necessity to define one’s role; 3.10 (a) on obtaining informed consent, 3.10 (c) and 4.02 on informing about the limits of confidentiality; 9.01 on adequate bases for assessments; 9.01 on adapting assessments to appropriate purposes in light of research; 9.02 on validity and reliability of assessment for this population; 9.03 (a) Informed Consent in Assessments; and 9.03 (c) on informed consent to use interpreter. All of this before counting what the 2008 referendum prohibits: working for authorities in a setting that violates human rights. In addition, Code 1.02 exempts research and consulting psychologists working for a “governing legal authority” like the CIA or Department of Defense from adhering to five other Ethics Standards (8.02, 8.03, 8.05, 8.07, 8.08). Code 1.02 has proved disastrous and must be deleted. There have to be more specific and refined ethics rules that guide and provide oversight for psychological consulting, research and training applicable to national security. Only a wide range of experts and the multiple stages of the Standard Revision process can produce workable Standards and procedures for psychologists working in these contexts.

Posted by: James Werth  
Representing: Individual  
Date Edited: 03/09/2009  
Comments:

I am writing to comment on the possibility of changing standard 1.02 of the current (2002) version of the APA ethics code. I have followed the detention center controversy for some time, having served on COLI prior to the referendum. I read all the material on the website related to the issue and have heard additional arguments regarding why the additional language is necessary to include in the enforceable standards. Although it was interesting to read the memos by the various APA governance groups regarding their perspectives, the mere statements of support or opposition were not very helpful because they did not spell out their reasoning. Thus, I do not know what particular issues related to their areas led to their decisions. As a result, other than a couple memos, all I could do was count approve or disapprove but not inform my thinking about the issues. This leads to minimal influence by these groups in regard to deciding how to proceed. Not surprisingly, given my experience with COLI and because of the length and detail of their memo, I found COLI’s memo to be the most persuasive and well-reasoned. It also reflected my own thinking prior to reading the other material. Beyond the legalese, the basic issue to me is the need for enforceability of the standards. As many others who have responded with comments have indicated, the ambiguity present in the phrase “basic principles of human rights” (and derivatives thereof) is acceptable for the aspirational section but would be problematic for the standards section. As a member of APA who is

a practitioner and a researcher I do not know what it means and therefore do not know whether my behavior is consistent with these provisions. Looking at it from the opposite perspective, I do not know how a regulatory body would be able to determine whether an action was in violation of the standard without getting into value-based reasoning. As a result of the above, as an individual member of APA I believe the ethical standards should not be changed to include reference to "basic principles of human rights" (or derivatives thereof). On a related note, I am surprised that there has been opposition to the inclusion of the sentence: "If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority." The way I read this, if there is a conflict between the ethics code and the law, I now do not have the unenviable choice of having to either violate the ethics code or violate the law but rather can follow the law and not be brought up on ethics charges. The arguments related to this sentence made by many who are associated with an advocacy organization regarding using following orders as an excuse seem to me to be moot because of the APA resolutions regarding torture and other behaviors.

Posted by: Carroll GREENE

Representing: Individual

Date Edited: 03/09/2009

Comments:

Any revision of specification of ethical principles should bring greater clarity - not confusion. Referring aspirationally to "protection of human rights", "avoidance of harm" - is certainly proper and should be our philosophical touchstone, as I believe it is. But, providing an ambiguous and frequently debated set of international guidelines - as the base by which American psychologists could be censured or prosecuted is an unwise move.

Posted by: Frank Summers

Representing: Individual

Date Edited: 03/10/2009

Comments:

The notion that "basic human rights" is too vague to be enforceable is completely specious. If that were the case, there could be no Universal Declaration of Human Rights or any other international agreement on human rights. Anyone who makes the "vagueness" argument simply does not want to change 1.02. The fact is that it is not that difficult to define "basic human rights" by an international agreement to which the U.S. is a signatory, such as the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights (ICCPR). Either would be fine, but the latter is probably preferable. It is a treaty signed by the U.S., so our country is bound by it in any case. To ensure that the ethics code has meaning, all we have to do is revise 1.02 to say that no psychologist can follow a "governing authority" in a way that violates basic human rights as defined in the ICCPR. Because the U.S. has signed this treaty, it is U.S. law. Without this type of revision of 1.02, the Nuremberg defense is written into the APA ethics code, and, therefore, the code contains a huge loophole that allows any

psychologist to act in an unethical way and defend that behavior if it is under a governing authority. If the APA wishes to allow this, it is permitting unethical behavior as long as it is expected by a "governing body," as happened at Abu Gharib, for example. No one should forget that the Nazi war criminals used exactly this defense and it was thrown out by the court. To think that psychology would resort to the defense that was used ineffectively by war criminals would be a sad indictment of the profession. There is no obstacle to amending the ethics code to make it meaningful. Those who say vagueness is such an obstacle have an unacknowledged agenda.

Posted by: Michael Jones

Representing: Individual

Date Edited: 03/10/2009

Comments:

The APA should have a strong stance on human rights. The new standard, however, is too vague to include in the enforceable standards. Non-specific rules that we must legally abide by create unnecessary confusion. (I.e., can I have my license challenged for describing a defendant as sane in a death penalty situation?) I also fear that we are unnecessarily creating rules that are already sufficiently covered in the ethics code. We do not need to add any more information to the code to clarify ethical behavior in this realm. There is no "conflict" between the ethics code and military or legal orders. Psychologists who believe that a conflict is possible in the code as it is now written probably have little exposure to the military. Military Psychologists have sufficient guidance to act according to the law, principles of human rights and the APA ethics code. Military members ARE NOT required to follow an illegal order. They are, in fact, obligated to refuse an illegal order. This is basic information that is taught on "day one" to all members of the military. If a superior officer orders a military psychologist to torture an individual and they agree, the "Nuremburg Defense" will not save them. Any military psychologist can be held responsible for their illegal acts. The section of 1.02 that describes "other governing legal authority" does not give license to psychologists to hide behind an illegal order. Torture, cruel and inhumane treatment are prohibited by the Geneva conventions, Military Law and U.S. law – regardless of the "legal status" of the prisoner. These laws apply to military members and supersede any "order." This is why the Abu Ghraib perpetrators were charged and convicted for their behavior, regardless of whether they blamed it on their superior officers' orders or suggestions. It is against the law to participate in cruel or inhumane treatment regardless of who orders it. There is nothing for a military psychologist to hide behind in the ethical standard as it is now written. The code is sufficient as it stands, changing it will potentially harm other psychologists who work in prison and law enforcement settings. There is no current "conflict" that needs to be resolved. Changing the wording, however, will create more ethical "conflicts."

Posted by: Trudy Bond

Representing: Individual

Date Edited: 03/11/2009

Comments:

The statement "If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority," must be deleted. As written it violates the intent of the ethics code and can be in violation of international law.

Posted by: Martha Davis

Representing: Individual

Date Edited: 03/11/2009

Comments:

The assumption that Code 1.02 protects us against legal liability or jeopardy to livelihood and reputation is highly suspect, and rarely if ever confirmed with actual case examples or data. 1.02 is less an ethical guideline than a failed attempt to provide ourselves with "liability insurance" or a kind of "stay out of legal trouble pass." In the real world it is easily ignored or overstepped by plaintiffs, police commissioners, military commanding officers, and any number of "legal governing authorities" -- just ask the Army Surgeon General who took ApA appeals to withdraw psychiatrists from interrogation teams "under advisement," then left them in. Meanwhile this non-functioning "liability EZ Pass" has been used for years to rationalize support for any number of unethical procedures. In 2002 we should have devoted more time to addressing the real concerns of psychologists caught in an ethics/law conflict and developed guidelines that did justice to the complexity of the issues AND established procedures/structures that provided them with real support, guidance, back-up, etc. We took a facile way out -- perhaps because we couldn't imagine the ways that 1.02 would be misused, and still can't quite believe it -- but there is no excuse now for holding onto a useless clause that compromises our profession. I'm not speaking as one who has never confronted law/ethics conflicts. I am speaking as a psychologist who would not do the research on criminal confessions I once did because the recent pattern of Ethics Committee decisions together with Codes like 1.02 leaves psychologists with inadequate guidance or support against pressures to keep such research secret, skirt human participant protections, and follow any number of compromising rules -- or lose the funding. And that's not a hypothetical scenario.

Posted by: Harry Kent

Representing: Individual

Date Edited: 03/11/2009

Comments:

Delete the sentence: "If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority." This sentence is an embarrassment to our profession and the longer it remains in the ethics code, the more compromised our professional code of ethics becomes. Do not qualify it, modify it, or prettify it. Simply delete. I agree with this post from Ruth Fallenbaum. I have read a number of the comments opposing changes in 1.02 and find it frankly reprehensible for people to defend a Nazi-era ethics code and then say that the alternative is "too vague." This has been going on too long for that! And it's even worse

for those who think that they themselves could be wrongly held accountable (to ethics!)if a change was made! If this organization can't straighten this out then nobody should be a member.

Posted by: David A. "Tony" Hoffman

Representing: Individual

Date Edited: 03/11/2009

Comments:

I like the proposed editions and additions to 1.02, but in the era of Guantanamo and our embarrassing involvement in it, i feel the code needs to go further. It needs to adhere to international law and ethics, and where conflict with American law exists, I feel that ethically we should adhere to a higher ethic than American law. APA should fully adhere to the Geneva Conventions and to the UN Declaration of Human Rights. In the face of (often contradictory) American law, the international standards should be upheld on the basis of their more fundamental respect for humanity. I support the recommendations of the PEAPA Memorandum. The worst part of 1.02 ("if the conflicts are unresolvable through these means, then the psychologist may follow the law, regulations, or other governing authority") should be DELETED from the Ethics Code. Psychologists should adhere to ethics first, then the law. i like the PEAPA protection Standard, to be placed in both sections of the Code ("No Standard of the Ethics Code can be used to justify violations of human rights or Standard 3.04, Avoiding Harm" ). Tony Hoffman, Ph.D. University of California, Santa Cruz

Posted by: muskat hermine

Representing: Individual

Date Edited: 03/11/2009

Comments:

I wholeheartedly support Psychologists for an Ethical APA's ethical and professional recommendations to remove the following from both the aspirational and enforceable sections of the Ethics Code: 1) "if the conflicts are unresolvable through these means, then the psychologist may follow the law, regulations, or other governing authority," Rather, it should read: "'If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Code and take steps to resolve the conflict in a responsible manner." 2)To remove the vague and misleading 1.03 qualifier "to the extent feasible." If this cannot be done, 1.03 should be removed in its entirety. These changes make it clear that there are no justifications for the violation of human rights.

Posted by: David Kannerstein

Representing: Individual

Date Edited: 03/11/2009

Comments:

I am writing to support the recommendations of the Psychologists for an Ethical APA memorandum that urges more extensive changes than just adding clauses to the existing Code 1.02. We must delete the part of 1.02 which allows psychologists to "follow the law, regulations, or other governing authority" if conflicts are unresolvable and clearly specify that violations of human rights cannot be justified by the ethics code on any grounds nor can violations of Standard 3.04, Avoiding Harm. I urge you to stand up for an unequivocal condemnation of human rights violations under all circumstances. David Kannerstein, Ph.D.

Posted by: Marsha Hammond

Representing: Individual

Date Edited: 03/11/2009

Comments:

Please delete this phrase: "If the conflicts are unresolvable through these means, then the psychologist may follow the law, regulations, or other governing authority." In particular, this matter has always irked me tremendously---particularly as I looked around and saw many of my colleagues simply taking the low road 'because it can't be resolved' and 'therefore I will just follow the law.' Sorry, there are times when 'the law' really is not adequate and when a psychologist should spend time to try and do the 'right thing'. I specifically am talking about this phrase as associated with any statement concerned with the ethical conduct of psychologists associated with APA: " Marsha V. Hammond, Licensed Psychologist, NC: hammondmv@netzero.com

Posted by: Morgan Banks

Representing: Individual

Date Edited: 03/12/2009

Comments:

The current APA Code of Ethics is a remarkable document, and is a wonderful example of the thoughtfulness and careful analysis that is a hallmark of our profession and science. As a member of the PENS Task Force, I am obliged not to reveal our confidential discussions, as that would be a clear breach of faith. However, I can easily state that US Military personnel, regardless of APA's Code of Ethics, are required to uphold the US Constitution. We have freely sworn an oath of office to uphold and defend it, and should there be a conflict between the US Constitution and the APA Code of Ethics, my oath of office will take precedence. I should state, however, that in my 35 years of military service I have never seen such a conflict. I must also note what may not be obvious to those outside of the military. Obedience to the US Constitution overrides any illegal orders that I, or any other serving officer might receive. In fact, orders to abuse anyone, to include detainees, are not only already illegal, but obligate a servicemember to report any such order, and to take action to prevent the abuse. Any servicemember who does not take action to prevent or stop such abuse is personally culpable and may be charged under the Uniformed Code of Military Justice. Said another way, Military personnel are required to uphold human rights, as defined by the US Constitution, and as detailed by law, and in several recent cases, articulated by the US

Supreme Court. If the intent of the proposed change is to support those human rights contained in the US Constitution, then there is no disagreement; this is already the law. Unfortunately, because the term, "human rights", without a legal reference, can be interpreted in numerous ways, the language proposed only adds confusion and a high potential for multiple interpretations. For that reason, I believe that the Code of Ethics should not be changed in this manner at this time. In my opinion, we, as psychologists and military officers, must maintain the ability to do the right thing, legally, ethically, and morally, without fear of sanction by our professional organization.

Posted by: Shara Sand

Representing: Individual

Date Edited: 03/12/2009

Comments:

i am declaring my support as an individual of the PEAPA Memorandum on Revision of Ethics Code 1.02 which was submitted March 7, 2009. I feel Part 4 of the memorandum is most crucial and restate it below. Part 4. If a modification of the current Ethics Code is the best option for addressing these problems, how should the code be modified? Because it has been four years since a modification of 1.02 was mandated by the APA Council of Representatives, the question is not whether to modify 1.02 but how to do it well as soon as possible. We recommend the following: a) Delete "if the conflicts are unresolvable through these means, then the psychologist may follow the law, regulations, or other governing authority." This clause should be stricken immediately from both the aspirational and enforceable sections of the EC no matter what other changes are made.. The addition "provided adherence does not violate basic human rights" in the Introduction would be deleted as it no longer has a clause to qualify. The new 1.02 would read: "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." We believe this is enough and puts the emphasis back where it belongs, working on resolution of the conflict. b) For consideration during the next Standard Revision: addition of a clause that privileges Ethics over Law in a conflict. If a more definitive Standard is needed, then add the following to the new 1.02: "If the conflict is unresolvable via such means, psychologists=20adhere to the Ethics09Code." According to the web #7 COFI memo and the web document #8 Table there is no precedent for this Standard, but we find errors in the Table. For example, the National Association of School Psychologists is listed as privileging Law over Ethics in a conflict, but in the clauses quoted from it, Ethics supercedes Law. In the #8 Table, we see two organizations that explicitly privilege Ethics over Law and four that implicitly support it. It would be instructive to know if this Standard has proven feasible and useful to these professionals. Because more research is needed, we propose this Standard be considered in the next EC Standard Revision. c) Immediately delete the 1.03 qualifier: "to the extent feasible." This clause is too vague and conducive to serious misuse. If it is not feasible to delete it, then the entire 1.03 should be deleted immediately and whatever problems it was designed to address should be referred to a Standard Revision of the Ethics Code. d) Immediately add an omnibus protection Standard to the Ethics Code. We propose that the Council

immediately act on inclusion of a new Standard placed in both the aspirational and enforceable sections like the following: "No Standard of the Ethics Code can be used to justify violations of human rights or Standard 3.04, Avoiding Harm." This would require criteria for defining human rights and for this we recommend the International Covenant on Civil and Political Rights (ICCPR). Ratified by the U.S., ICCPR is a very clear, comprehensive treaty that has been well developed and given meaning by many courts and experts. We understand that "basic" as in "basic human rights" is unnecessary and not useful, so we have omitted it. The proposed protection Standard would help close loopholes and prevent misuse of any Ethics Standard, and would bring the Ethics Code in line with the referendum passed in Fall 2008. It would also be a guide to resolving difficult conflicts by specifying that the psychologist should not choose to follow law, regulations, and governing legal authority if doing so violates the new protections Standard and the ICCPR. e) Address the ethical challenges of psychological research and consulting that serves national security in the next Standard Revision of the Ethics Code. The PENS Task Force recommendations failed in part because they were hastily made by a very limited group. The ethical problems of the burgeoning area of "national security psychology" warrant the full revision process and consideration of additional Standards such as Canadian Psychological Association Ethics Code 1.6: "Refuse to advise, train, or supply information to anyone who, in the psychologist's judgement, will use the knowledge or skills to infringe on human rights."

Posted by: Ryan Hunt

Representing: Individual

Date Edited: 03/12/2009

Comments:

I strongly and unequivocally support the recommendations made by Psychologists for an Ethical APA (PEAPA) for amending 1.02 to remove the clause allowing for law to supersede ethics. The group's recommendation is available on [www.ethicalapa.com](http://www.ethicalapa.com), and I recommend a perusal of it to all concerned psychologists and APA members.

Additionally, I recommend reviewing the PENS Task Force Report, available at: [www.apa.org/releases/PENSTaskForceReportFinal.pdf](http://www.apa.org/releases/PENSTaskForceReportFinal.pdf) The PENS Report provides important context for this debate, and was contributed to by, among others, Dr. Morgan Banks, whose comments are posted above. Dr. Banks, a former SERE psychologist, makes the bizarre argument in his post that, on the one hand, human rights are adequately addressed through the UCMJ for military personnel, and on the other hand the whole notion of human rights (he places the term in quotes, perhaps to indicate the term's foreignness to him or his suspicion of it!) is too vague to be employed by the APA. The implication that members of the military cannot commit human rights violations because the UCMJ prohibits it is insulting to all of us with a working short-term memory. Certainly, Dr. Banks is aware that torture and abuse of the most deliberate, calculated, orchestrated and repugnantly inhumane variety has just occurred (and is still occurring) under the auspices of the CIA and U.S. military at places like Guantanamo and the "black sites?" Is Dr. Banks aware that there are still over 200 prisoners in Guantanamo, many of whom are currently hunger striking and being force-fed by "medical professionals?" I would submit that to the extent that we in the APA find the concept of human rights



vague, currently, it's because we've all been "Gitmo-ized" by eight years of Cheney/Addington/Yoo/Bybee and their henchmen like Dr. Banks. I am ashamed that I must share the title of psychologist with "professionals" like Dr. Banks, as his association with the title cheapens and degrades it for us all. I encourage the APA to move beyond this era of the PENS process, its complicity in torture, its doublespeak, and its stonewalling of members' efforts for change. The passage of the Referendum this past fall indicates a deep divide between the APA membership and its entrenched leadership. We must have public investigations into psychologists' roles in torture and abuse, hold accountable those complicit, and take strong and decisive steps (such as amending 1.02, as recommended by PEAPA) to break from the APA's past policies as exemplified by PENS, if we are to regain our professional and ethical bearings as psychologists in this country. One excellent starting point would be the resignations of Drs. Behnke, Farberman, and all others in the APA leadership who have so blithely toadied for the U.S. Military during the Bush administration. Another would be the PEAPA-recommended revision of 1.02. If the APA cannot undertake actions such as these, it only provides further evidence of its increasing irrelevance and will be judged and treated accordingly by American psychology going forward. Perhaps the recency of all of these events may hamper our ability to gain a critical perspective on them. However, in the words of Dr. King, "let us realize the arc of the moral universe is long but it bends toward justice," and let us also realize that what may seem like a relatively sterile or clerical issue to some within the APA now may well look radically different with the benefit of hindsight. Let us hope that the regret we will all already inevitably feel about our country's willingness to torture (and, what's more, to employ psychologists to refine and implement cruel new techniques of psychological torture) in the name of "freedom" and "democracy" will not be compounded by further regret regarding our subsequent unwillingness, both as psychological professionals and as U.S. citizens, to face up to the reality of these acts, accept responsibility collectively and individually, and take steps to ensure that such abominable events do not happen again. Fortunately, we have opportunities such as the current one regarding changing 1.02 to bend this arc more quickly toward the justice that is already long overdue. Yours, Ryan Hunt, Ph.D.

Posted by: Judith Glassgold

Representing: Individual

Date Edited: 03/12/2009

Comments:

As the former Chair of a state Ethics Committee, I believe that the proposed language "in keeping with basic principles of human rights" is vague. I am concerned that this would open up psychologists, especially those in who work in forensic settings or who evaluate those whose conduct has brought them into criminal judicial processes, to ethics complaints based on concerns that certain processes such as involuntary commitment of sexual offenders, or certain US prison facilities represent violations of human rights. Further, in certain situations, such as child abuse complaints, psychologists would be in the position of balancing the rights of the victims and perpetrators in ways that do not allow the protection of the vulnerable party. Although some may see this Standard as providing a loophole for some, removing it might result in adverse impacts on many. I

would prefer that the Principles section of the Ethics Code be examined to strengthen the discussion of human rights concerns.

Posted by: Sally Cameron

Representing: North Carolina Psychological Association

Role in Group: Executive Director

Members in Group: 1025

Date Edited: 03/12/2009

Comments:

From the North Carolina Psychological Association At its February 20, 2009 meeting, the Executive Committee of the North Carolina Psychological Association (NCPA) reviewed the proposed revision to Ethical Standard 1.02 of the Ethical Principles of Psychologists and Code of Conduct (2002). We certainly support conducting ourselves as psychologists "in keeping with basic principles of human rights", as included in the Introduction and Applicability Section of the Code that covers resolution of conflicts between ethics and law. However, we agree that there exists no clear, operational definition of what would constitute "basic principles of human rights." We agree that psychologists' ability to comply and APA's ability to enforce a vaguely defined enforceable Standard would be difficult if not impossible. Therefore, we recommend that Standard 1.02 not be revised at the current time.

Posted by: Neil Altman

Representing: Individual

Date Edited: 03/13/2009

Comments:

I support the PEAPA comments. The loophole in the ethics code created by the statement, that the code may be violated when it comes in conflict with law or organizational requirements is so huge a truck can be driven through it. APA can never unequivocally support someone who resists an unscrupulous government or organization as long as 1.02 and 1.03 exist as they stand. The US system of government is designed to protect against tyranny, and should be a model for our ethics code in that respect.

Posted by: Gabrielle Stutman

Representing: Individual

Date Edited: 03/13/2009

Comments:

I support the recommendations of the PEAPA Memorandum but urge more extensive changes than simply adding clauses to the existing 1.02. I do not accept the part of 1.02 ("if the conflicts are unresolvable through these means, then the psychologist may follow the law, regulations, or other governing authority"). This part must be DELETED from the aspirational and enforceable parts of the Ethics Code. I also want to see an ombibus protection Standard placed in both sections of the Code ("No Standard of the Ethics Code can be used to justify violations of human rights or Standard 3.04, Avoiding Harm" ).

And support the PEAPA memorandum on the review process, scheduling of changes, and how to clearly define human rights.

Posted by: Debra Dunivin

Representing: Individual

Date Edited: 03/13/2009

Comments:

Thanks for the opportunity to comment on Standard 1.02 and to review the abundant materials accompanying the request for comment. I found particularly useful the history of developing the standard, clarification of the meaning of conflict in Standard 1.02, as well as the comments of APA Boards and Committees, members, and other interested parties. I am not in favor of changing the current standard. I base my opinion on a careful review of these materials, my own experience as a practicing psychologist for almost 30 years (in private, public, and military settings), and my service on a state psychological association ethics committee. I see no evidence that the current situation meets the substantive criteria established by the Ethics Committee (1995, 1997) to warrant change to the Ethics Code outside the standard revision process. Furthermore, I concur with conclusions of the Committee on Legal Issues (2008) - specifically that the proposed change would create an impermissibly vague ethical standard that would require psychologists in certain circumstances to violate law, and that an ambiguous standard would have negative consequences for individual psychologists, the association, and the general public. I recommend that this issue be re-considered during the Ethics Code standard revision process. Thank you!

Posted by: Steven Reisner

Representing: Coalition for an Ethical Psychology

Role in Group: Founding Member

Members in Group: 1000

Date Edited: 03/13/2009

Comments:

We felt it was important to provide analysis and historical review to eliminate some serious misinterpretations of the 1.02 dilemma. The primary issue is not whether psychologists should protect human rights in some vague way, but how to ensure that psychologists themselves do not again participate in coercive 'national security' interrogations or other activities that are clear violations of human rights. .... As a historical reminder, in 2005, Council requested that the Ethics Committee address the 1.02 dilemma because 1.02 was cited in the deeply flawed PENS report. In combination, the report and 1.02 permitted psychologists involved in national security interrogations to follow law and military regulation, even if these violated the ethics code. The PENS report was crafted during a 2½ day meeting by a Task Force made up predominantly of psychologists employed by the Department of Defense to supervise, design, implement and/or research the very coercive techniques they were charged with evaluating for consistency with the APA ethics code. .... Council responded to the PENS report in August 2005 by asking for a reversal of the Nuremburg defense sanctioned in 1.02. In

addition, Council requested a casebook of specific guidance for national security psychologists. Throughout almost four years of continuing reports of psychologists' involvement in abusive interrogations, the APA ethics committee has done neither – tacitly permitting the interrogation consultations to continue without ethical oversight. There is no casebook; there has been no change to the ethics code. .... Council had it right – 1.02 has been used by the military to instruct psychologists assisting in national security interrogations to follow military regulation over ethics. The Behavioral Science Consultation Team (BSCT) Instruction, written by Col. Morgan Banks for psychologist-interrogators states: "The Ethics Code is always subordinate to the law and regulations." [1] And the recently declassified BSCT Policy memorandum of 2006 states: "The Ethics code does not supersede applicable US and international law, regulations or DoD policy." .... The issue at hand, then, is not about parsing the legal nuances of adding the words, "except in cases of basic human rights," but rather is about how to ensure psychologists do not follow orders to abuse detainees, even if those orders are technically legal. It is time for those charged with addressing and changing 1.02 to redirect the discussion away from legalistic arguments for maintaining the status quo and toward preventing the repetition of actual national security psychologists abusing actual detainees, legally and in compliance with the APA Ethics Code. .... Instead the APA Committee on Legal Issues (COLI), in their recent commentary on possible 1.02 revision, denies that there were any abuses: "although concerns have been expressed recently about psychologists working in extra-legal detention settings, we have seen little evidence of a profound problem and are not aware of situations in which psychologists have been ordered to engage in unethical behavior" (p. 5). .... Comments like this, which ignore the evidence of the Senate Armed Services Committee report, the Report of the Inspector General of the Department of Defense, the United Nations Committee on Human Rights, the International Committee of the Red Cross and dozens of verified reports in the press are, frankly, an embarrassment. Even Col. Larry James (Ret), in his book *Fixing Hell*, asserted that a group of psychologists was brought to Guantánamo "to teach the interrogators harsh and abusive interrogation tactics." (p. 20). .... But the reason that 1.02 must be changed is not simply to protect and guide psychologists so that they are not pressured into violating their ethics – 1.02 must be changed because the APA has used 1.02 as part of a program of complicity in supporting psychologists' role in abusive and coercive interrogations. 1.02 must be changed to restore the APA's and psychologists' good name. .... COLI asserts further, "Assuming, arguendo, that there is a profound problem, there is no evidence that this problem is widespread" (p. 5). In fact, the evidence tells a different story. The problem is not only widespread (existing wherever there have been BSCTs following standard operating procedures at Guantánamo, in Afghanistan, Iraq, or CIA black sites), but implicates psychologists who were, in many cases members of the APA. More damning still, many of them were given responsibility for making APA policy on interrogation ethics. Please see the addendum to this letter for a list of nine such psychologists and their contributions to coercive interrogation programs. .... It is time for the ethics committee to delete the line, "If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority." This line not only provides defense for what may be ethically indefensible, but it subverts the ethics code entirely by subordinating ethics to government authority. This is our simple recommendation, to

eliminate this unnecessary and unnecessarily dangerous line. Complete deletion of this section of 1.02 alone resolves this most serious problem. If there are, in fact, certain conditions in which the general ethics code provisions ought to be superseded by laws or government acts, these circumstances should be explicitly enumerated as exceptional. The current blanket exemption from ethical responsibility, when law or regulations permit, is simply unacceptable. .... [Footnote #1] Banks' "Providing Psychological Support for Interrogations" can be found in the Intelligence Ethics Collection. Archives of the Hoover Institution on War, Revolution, and Peace, at Stanford University, PENS Listserv and related materials collection.

..... For the Coalition for  
an Ethical Psychology: Steven Reisner, Jean Maria Arrigo, Brad Olson, Stephen Soldz,  
Ted Strauss, Bryant Welch

Posted by: Brad Olson

Representing: Coalition for an Ethical Psychology

Role in Group: co-founder

Members in Group: 1000

Date Edited: 03/13/2009

Comments:

Addendum to the commentary by the Coalition for an Ethical Psychology ..... Here are a few known examples. Each of the following psychologists was either part of the BSCT program, the Joint Personnel Recovery Agency/ Survival, Evasion, Resistance, Escape Program (JPRA/SERE) program, the CIA's Counterterrorist Center (CIA CTC) or some combination of these. The majority are APA members. Many were on or connected to the Presidential Task Force on Psychological Ethics and National Security (PENS TF). According to the Senate Armed Services Committee (SASC), psychologists were among the instructors from the JPRA/SERE program who reverse-engineered SERE training techniques including "sensory deprivation, sleep disruption, stress positions, waterboarding, and slapping... keeping the lights on at all times, and treating a person like an animal" to institute a new interrogation program for the Bush administration." According to the same report, the CIA CTC, which oversaw the torture of Zubaydah and other 'high value detainees' at black sites, was also instrumental in bringing SERE techniques to Guantánamo. .... JOHN LESO (JPRA/SERE; APA member). Known as BSCT #1, Leso was the BSCT advisor on the interrogation of Mohammed Al-Quattani at Guantánamo Bay in 2002. [Recently this interrogation was described as meeting "the legal definition of torture," by Susan Crawford, the Bush administration's Convener of the Military Commissions (Washington Post, Jan 14, 2009)] At a meeting at Guantánamo on October 2, 2002 the BSCT Leso headed made the following recommendations for interrogation strategies: "What's more effective than fear-based strategies are camp-wide, environmental strategies designed to disrupt cohesion and communication among detainees. Environment should foster dependence and compliance...Psychological stressors are extremely effective (i.e. sleep deprivation, withholding food, isolation, loss of time)." The ethics committee has had a complaint against Leso, which remains unresolved after more than two years. .... MORGAN BANKS (PENS Task Force, not

APA member; Army Special Operations and Senior SERE psychologist). Banks was advisor on interrogations at Bagram in 2001-2002 when SERE-style interrogation techniques were reported and many abuses have been reported and documented. He has been cited by SASC and multiple sources as the supervisor for BSCT psychologists employing abusive SERE techniques at Guantánamo Bay, at a time when isolation, sleep deprivation, sensory deprivation and sensory overload techniques were commonly reported. According to the SASC and the Department of Defense Inspector General's reports, Banks brought Leso to Ft. Bragg for training in reverse-engineering SERE techniques on Sept 16, 2002. Two weeks after this training Leso participated in the torture planning meeting described above. The torture of Al-Quattani began on Nov. 23, 2002. Banks was a frequent visitor to Guantánamo, overseeing interrogation techniques of BSCT psychologist. .... LARRY JAMES (PENS TF; APA member; Joint Intelligence Group, Guantanamo). James replaced Leso as BSCT #1 in January 2003, and was Chief Psychologists for the Joint Intelligence Group at Guantánamo, implementing the following standard operating procedures for detainees: ...."4-20. Behavior Management Plan - ...a. Phase One Behavior Management Plan (First thirty days or as directed by JIG). The purpose of the Behavior Management Plan is to enhance and exploit the disorientation and disorganization felt by a newly arrived detainee in the interrogation process. It concentrates on isolating the detainee and fostering dependence of the detainee on his interrogator. During the first two weeks at Camp Delta...the following conditions will apply: ... No ICRC [Red Cross] or Chaplain contact... No Koran, prayer beads, prayer cap. ...b. Phase Two Behavior Management Plan. The two-week period following Phase 1 will continue the process of isolating the detainee and fostering dependence on the interrogator. Until the JIG Commander changes his classification, the detainee will remain a Level 5 with the following: ...Continued MSU....Koran, prayer beads and prayer cap distributed by interrogator...." ....During his tenure, universal standards of isolation and harsh confinement conditions were implemented. Sleep disturbance, sensory deprivation and assault have been documented (including of minors). Again, this SOP clearly violates the APA ethics code. ....DEBORAH DUNIVIN (JPRA/SERE; APA Member; spouse of PENS TF observer, Russ Newman). Dunivin worked with both James and Leso at Walter Reed. Like James and Leso, she, too, was deployed to Guantanamo, arriving in April 2004, during the period when the second standard operating procedure was in place, which also calls for interrogation and confinement procedures that violate APA ethics and international law. She received SERE training in the months prior to her deployment. Dunivin, James and Banks together presented the PENS report to Surgeon General Kiley, who attached it to his ensuing BSCT memorandum. ....JAMES MITCHELL and BRUCE JESSEN (JPRA/SERE, under contract for CIA/CTC). Two psychologists reported by eye-witnesses to have waterboarded Zubaydah, and to have employed "learned helplessness" techniques as part of interrogation process. ....SCOTT SHUMATE (PENS TF; CIA/CTC; APA member). By his own account, was present at the torture of Zubaydah which included not only waterboarding, but other techniques which in combination are known to constitute torture under international law. Apparently, Shumate did nothing to halt the procedure or try to ensure that it was stopped (the procedure was ordered by the Vice President and the Defense Secretary among others on the Principals' Committee in the White House). ....KIRK HUBBARD (CIA/CTC; APA member). Co-organized classified research and training conferences for

interrogators, with the APA, on a “need-to-know” (that is classified) basis. One such training involved research into the use of drugs and sensory overload on interrogation; another brought former APA President Seligman to train interrogators in “learned helplessness” techniques. In attendance were Mitchell and Jessen, who following these trainings used waterboarding and learned helplessness techniques in their interrogations. ....BRYCE LEFEVER (PENS TF, SERE, APA member). Lefever is a SERE trained psychologist who advised on interrogations at Bagram Airbase in Afghanistan in summer, 2003, during a period when SERE techniques were widely reported to be in use there. He has spoken publicly about the value of techniques that are proscribed by APA ethics: “There's something to be said for sending the message that the gloves are coming off,” says Capt. Bryce Lefever, a Navy psychologist and former SERE school instructor. “You don't take a knife to a gunfight.”... “If Padilla was abused, then it was for a righteous purpose – to reveal the truth.” Lefever opposes the use of torture because in most instances it is ineffective. But sometimes, harsh and brutal tactics can produce results, he adds. ....DIANE M. ZIERHOFFER (former APA member). BSCT psychologist who, according to court documents, recommended isolation and increased stress for depressed minor Mohammed Jawad at Guantánamo. After being consulted by an interrogator because the boy appeared to be having a breakdown, Zierhoffer saw this as an opportunity to increase pressure. Zierhoffer reportedly wrote in her BSCT evaluation, “He appears to be rather frightened, and it looks as if he could break easily if he were isolated from his support network and made to rely solely on the interrogator...Make him as uncomfortable as possible. Work him as hard as possible.” At the time of the alleged abuse, Zierhoffer apparently was an APA member.

Posted by: Joseph de Rivera  
Representing: APA Division 48  
Role in Group: President elect  
Members in Group: 750  
Date Edited: 03/13/2009  
Comments:

Response from APA Division 48: Peace Psychology Since 2005, the Executive Committee of Division 48 has supported efforts to revise Standards 1.02 and 1.03 to clarify that psychologists act in accord with principles of basic human rights. We urge the Ethics Committee to clarify these standards in the broadest sense. The current language of 1.02 and 1.03 suggests that when psychologists face conflicts between legal mandates and ethics, psychologists may obey legal mandates that deny such basic human rights as freedom from discrimination, freedom from harassment, and freedom from torture and other cruel, inhuman, and degrading treatment and punishment. The following examples show that the current language does not provide adequate guidance: 1. Like thousands of other psychologists, APA members, including Division 48 members, work full-time, or consult, in countries outside the U.S. In such cases, Standards 1.02 and 1.03 apply to psychologists work settings where laws, regulations, and organizations may mandate discrimination based on gender and sexual orientation, age, religion, etc. Without additional modification, the current language of these standards does not provide sufficient support for ethical behavior. 2. Similarly, APA members working in the U.S.

may face conflicts between ethics and interpretations of laws. Not only do laws evolve over time but laws are interpreted differently in various jurisdictions and by various organizations. For example, immediately after the 2006 Resolution Against Torture was adopted, an early career psychologist who worked in a group home for teens told the Council Representatives of Division 48 that she was required to punish these young people by keeping them in stress positions for a long time. She viewed this treatment as cruel and unusual punishment; however, the organization that employed her interpreted state law to mean that psychologists could punish children in this way. Standards 1.02 and 1.03 should provide additional guidance and protection for psychologists when their organization's interpretation of legal mandates conflicts with the Standards. Division 48 officers and Executive Committee welcome additional opportunities to provide feedback and offer suggestions to the Ethics Committee. Eduardo Diaz, President Deborah Ragin, Past President Joseph de Rivera, President Elect

Posted by: Judith Van Hoorn

Representing: Movers of APA Council 2008 New Business Item 34E

Role in Group: member/COR Rep

Members in Group: 8

Date Edited: 03/13/2009

Comments:

Comments from the Movers of APA Council 2008 New Business Item 34E Regarding Ethics Committee Recommendations for Standards 1.02 and 1.03 Judith Van Hoorn (Div. 48) Laurie Wagner (Div. 39) Corann Okorodudu (Div. 48) Allen Omoto (Div. 9) Bill Strickland (Div. 19) Martha Banks (Div. 45) Beth Wiggins (Div. 41) Jennifer Kelly (Georgia) Last year, all of us were members of the APA Council of Representatives (COR). During the August Council meeting we submitted a New Business Item (NBI 34E), cosponsored by 59 additional members of Council, including four members of the Board of Directors. NBI 34E includes the following text addressed to the Ethics Committee: "... BE IT RESOLVED that the language proposed for Council's action communicate clearly that Standards 1.02 and 1.03 can never be interpreted to justify violations of basic human rights..." As Movers of the New Business Item, we wish to add our perspective to the call for comments. (See below for the text of these Standards.)

I. Rationale for Clarifying Language of Ethics Code Standard 1.02 • In 2005, by an almost unanimous vote, the APA Council of Representatives directed the Ethics Committee to make recommendations to Council to resolve the discrepancy between the aspirational and enforceable sections of the Ethics Code. Council recommended adding to Standard 1.02 the following text from the Introduction and Applicability section of the Ethics Code: "... in keeping with principles of basic human rights." • As written, Standard 1.02 allows a psychologist to act unethically. It provides the defense of obeying laws, regulations or a governing authority. Thus, a psychologist may violate principles of basic human rights by participating in behaviors APA has defined as unfair discrimination, harassment, or torture and cruel, inhuman or degrading treatment or punishment (to name a few) as long as she/he is obeying a law, regulation or governing authority. Currently 1.02 is incommensurate with other Standards that demonstrate a resolve that psychologists work in accord with basic human rights (e.g., 3.01 unfair



discrimination; 3.04 avoiding harm). Although this problem with 1.02 came to light when Council grappled with the role of psychologists in national security settings the problem is in no way limited to such settings. Standard 1.02 has broad applications and by its inclusion in the first section of the Ethics Code it sets the tone and provides context for all other Standards.

II. 2008: Rationale for Additional Clarifications During the past two years, the Ethics Committee and the Director of the APA Ethics Office, Dr. Steven Behnke, have issued two clarifications critical to understanding of Standard 1.02. We strongly recommend that both should be included in the Ethics Code so that all psychologists become aware of these fundamental clarifications.

- First, on several occasions, Dr. Behnke has clarified that Standard 1.02 can never be used as a justification for participating in torture or cruel, inhuman or degrading treatment or punishment. Psychologists are placed at risk for violating this Standard if this prohibition has been made orally but not placed into the Ethics Code, where it can be universally known.
- Second, the Ethics Committee included a clear definition of “conflict” in its call for comments. Currently, the Ethics Code, including Standards 1.02 and 1.03, is unclear about what constitutes a conflict between ethics and law.
- Both clarifications provide essential guidance to psychologists and should be added either within the text of Standards 1.02 and 1.03 or as footnotes.

III. Recommendations for Alternative Approaches

- Consider using one of the four versions of text for 1.02 developed last November based upon conversations between Ethics Committee members and movers of the NBI. All four are attempts to resolve the discrepancy. (See attached.)
- Consider returning to the 1992 version of 1.02 as the basic text. This text appears to serve the same purpose, yet underscores psychologists’ responsible behavior. “If psychologists’ ethical responsibilities conflict with law, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict in a responsible manner.”
- Consider employing text parallel to Standard 1.03 as the basic text: “... 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.”

Consider the standards, procedures, and guidelines of other health and mental health organizations, such as advising members to seek appropriate consultation.

IV. Specific Suggestions for Clarification and Guidance

- The Ethics Committee should define “principles of basic human rights.” We suggest that a potentially useful framework for defining basic human rights is the “United Nations Declaration of Human Rights” which is available in several languages at: [www.unhchr.ch/undhr/](http://www.unhchr.ch/undhr/).
- The Ethics Committee could recommend language that provides guidance rather than mandates behavior. For example: “... guided by principles of basic human rights.”
- The Ethics Committee could recommend using phrases already included in various Standards. For example: 3.05: “... 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.” 8.08: “... humane values...”
- The Ethics Committee could recommend text that includes language from the Standards and text that references the Principles and Introduction: “... in accordance with humane values (8.08) and guided by a review of the Principles and Introduction.” “... guided by principles of basic human rights and in maximal compliance with the Ethics Code (3.05). “...with maximal compliance with the Ethics Code (3.05) and in accord with humane values (8.08).”

In conclusion, we note that on many occasions since 2005, Council has enacted numerous human rights policies, particularly policies against unfair

discrimination as well as policies against torture. As Movers of New Business Item 34E, we urge the Ethics Committee to propose language that communicates clearly that Standards 1.02 and 1.03 can never be interpreted to justify violations of basic human rights and, furthermore, that psychologists resolve such conflicts guided by principles of basic human rights and maximal compliance with the Ethical Standards.

Posted by: Larry James  
Representing: Individual  
Date Edited: 03/13/2009  
Comments:

I do not support the recommended change to the ethics code. The resolution has been approved by the membership and I believe that the ethics code provides the necessary guidance for the membership. I support the COLI interpretation/recommendation.

Posted by: Fitzpatrick Michael  
Representing: Individual  
Date Edited: 03/13/2009  
Comments:

In agreement with Psychologist for a Ethical APA, I am in favor of more extensive changes to Ethics Codes 1.02 and 1.03 to support human rights. Specifically I encourage the APA Ethics Committee to delete the following clause immediately from Code 1.02: "if the conflicts are unresolvable through these means, then the psychologist may follow the law, regulations, or other governing authority." I also call for an addition of a clause that supercede Ethics over Law in a conflict. Further, concerning Code 1.03, the qualifier, "to the extent possible," should be immediately deleted. Lastly, a omnibus protection Standard to the Ethics Code should be immediately added.

Posted by: Cathleen Civiello  
Representing: Individual  
Date Edited: 03/14/2009  
Comments:

The work by APA Council has already addressed this issue in a thoughtful and helpful way. The proposed change will confuse the issue and has many potential significant second order effects primarily due to the vague nature of the statement. It leaves the door wide open for complaints based on personal political agendas and not based on inappropriate or harmful behavior because the language is subject to individual interpretation. For example, it could have a chilling effect on personnel doing important and ethical work in areas where individuals regularly claim (e.g., as part of a legal defense by someone convicted of a crime) that the human rights were violated. Such a statement belongs in the aspirational aspect of the code, NOT in the standards.

Posted by: Jeffrey Stolrow

Representing: Individual

Date Edited: 03/14/2009

Comments:

Speaking as a private citizen, I concur with the comments made by other psychologists presenting comments to this issue that all military personnel are required to uphold human rights, as defined by the U.S. Constitution, and as detailed by other law, to include decisions of the US Supreme Court. I support an APA Ethics Code which would support those human rights contained in the US Constitution, as this is already the law. However, I also concur with the views of other psychologists who have made comments on this issue that the term, "human rights", without a legal reference to the Constitution, can be interpreted in numerous ways. This language creates confusion and the potential for the APA to adopt other international instruments and interpret these instruments as being of equal stature or superseding the Constitution in defining human rights. For this reason, I strongly recommend that the Code of Ethics should not be changed in this manner. All military officers, to include military psychologists, must swear an oath to the U.S. Constitution. This oath takes precedence over all other oaths and codes. It is an oath taken to ensure the rule of law as defined by the United States, rather than the laws or regulations of another State or non-state actor, prevails. Further, the Constitutional oath legally obligates all military officers to abide by human rights as defined by U.S. law. In addition, violation of these laws subjects all officers, including military psychologists, to legal action and punishment under military law according to the Uniform Code of Military Justice. If the APA changes the Ethics Code to refer to human rights without legal reference to the Constitution as the essential and guiding document for such rights, then the APA could adopt another reference(s) to interpret human rights. If this were to occur, all military psychologists would be immediately placed in an extremely serious ethical dilemma. This dilemma would involve a conflict between allegiance to the U.S. Constitution and the United States as professional commissioned military officers versus professional responsibility as clinical psychologists to uphold and abide by the APA Ethics Code. All military psychologists are required to uphold human rights as defined by the U.S. Constitution, to include that law as interpreted by the Supreme Court. Currently these requirements, as defined through the U.S. Constitution, are in complete congruence with the APA Ethics Code, which military psychologists also uphold. I have great confidence that the APA membership will clearly understand this congruence. I also have great confidence that the APA membership will understand the significance of the potential ethical dilemma for military psychologists if the proposed changes are made in the Ethics Code.

Posted by: Glenn Ally, PhD, MP

Representing: Individual

Date Edited: 03/15/2009

Comments:

First, thanks to the Ethic Committee for the opportunity to comment. I will keep this quite brief. I concur with the comments of COLI. Having revisited the litany of frequently heard allegations and justifications for the suggested change (often by the

"usual suspects"), I find the comment by Carroll Greene to be most appropriate. So, my comment is quite simple, "Don't change it." With warm regards, Glenn Ally

Posted by: Criag Jenkins

Representing: Individual

Date Edited: 03/15/2009

Comments:

I am a clinical psychologist in the US military. The opinion I am expressing is my own and does not reflect DoD policy or positions. I have found the APA ethics code a very useful tool to approach and guide me through challenges. I see that movement from the current verbiage to one that would expressly and by policy place psychologists in a no win bind as not prudent. Psychologist must not have choose to break the law or violate the ethics code by design. Movement it the proposed direction would weaken the code and I think APA. I do not support this change. Respectfully Craig Jenkins

Posted by: Pennie Hoofman

Representing: Individual

Date Edited: 03/15/2009

Comments:

I support NOT changing the wording to current Ethical Standard 1.02 or 1.03. I have read all documents and comments included on this website. After careful consideration of this issue, I also believe that "basic principles of human rights" is not operationally defined and has no one clear reference as a basis. This lack of a standard definition would lead to enforceability being subjective. How does one investigate an alleged violation of a non-defined or poorly defined standard? Subjectively enforcing a standard that is not well defined could lead to accusations based on self-serving interests.

Posted by: Mike Wessells

Representing: Individual

Date Edited: 03/16/2009

Comments:

Ethical Standard 1.02, as currently written, encounters two highly significant problems. First, it diminishes the importance of international human rights standards, which ought to be the foundation of any code of professional ethics. The tension between this statement and that in the Preamble ('Psychologists respect and protect civil and human rights') is so great as to render the latter meaningless in practice. Sentence two of Standard 1.02 is particularly problematic since it states that in the case of an unresolvable ethical conflict, psychologists may adhere to law and legal authority. But surely national law cannot be permitted to trump international human rights standards. History is replete with cases such as Nazi Germany in which the state apparatus and the law itself were transformed in ways that trampled human rights. Although states ought to protect human rights, they often perpetrate the worst human rights abuses, and the U. S. is no exception. Human rights standards gain have power precisely because they cannot be trumped by

national law or set aside by misguided leaders when it is politically or otherwise expedient to do so. In the international humanitarian work that I do, there is often conflict between human rights standards and the law, whether it be U. S. law or the law of countries such as India or Sri Lanka. When such conflict arises, the appropriate beacon for ethical guidance is not national law but international human rights standards. I strongly suggest that the wording of sentence two be changed to be consistent with this principle. Second, Standard 1.02 requires that when psychologists' ethical responsibilities conflict with law or governing legal authority, 'psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict.' This requirement severely underestimates the weight of institutional pressures in organizations such as the U. S. military. It is fine to call for steps to resolve the conflict, but what choice is there really for a young recruit who has a family to think about and who desires a military career when the commanding officer says 'Do X' and other recruits (and even the American public) think doing X is appropriate under the circumstances? What we have learned as psychologists about obedience, conformity, and patriotism lead to the conclusion that few steps exist to resolve such a conflict, and the steps that do exist favor the governing, institutional power. Hence, this statement is an open door for institutional abuse and stifling of the ethical dialogue that needs to occur. A stronger arrangement would be to have an APA or interprofessional ethics board to go to for advice and legal support in such cases and to serve as an advocate where that is appropriate.

Posted by: Laurence Perotti

Representing: Individual

Date Edited: 03/16/2009

Comments:

The APA Ethical Standards document is remarkable. It is well intentioned and well crafted. In as much as I am a psychologist, I support it. However, I have a prior commitment. I am, first and foremost, a citizen of the United States of America. I adhere to the principles espoused in the Constitution of the United States of America and believe that document summarizes what the founding fathers would say is the "consent of the governed." Therefore, I will uphold the constitution to the best of my understanding and ability whenever there is a conflict between that document and the APA Ethical Standards. In light of my prior commitment, I see no discrepancy between the current Introduction and Applicability section of the Ethical Principles of Psychologists and Code of Conduct (2002) and Ethical Standard 1.02 of that same document. I believe there is no need to revise either.

Posted by: Edward Crandell

Representing: Individual

Date Edited: 03/16/2009

Comments:

After reviewing the comments, I believe my comment adds little in that it is clear that the proposed change creates an undefined standard lacking in objectivity. It places many

psychologists working in a variety of settings at risk to defend their actions when they are operating within the standards of both national and international law.

Posted by: Kent Corso  
Representing: Individual  
Date Edited: 03/17/2009

Comments:

I do not support a change to Standard 1.02. Although it may not intend to create additional problems for other psychologists, it will likely have the “side effects” mentioned in the postings above. The Executive, Legislative, and Judicial branches of our government are currently addressing the matter of inhumane treatment. It is most appropriate to allow them to do this, and for psychologists concern themselves with ethical matters in the way that our code has specified for years. As with any other ethical violation, a person suspected of unethical behavior should be approached first individually. If there is no resolution, additional action should be taken (e.g. at the organizational level). Ethical violations of inhumane treatment, abuse or torture should be handled no differently than other violations. Finally, there seems to be the concern that psychologists working in the military would benefit from additional protection from the APA for situations in which a superior officer orders the psychologist to do unethical or illegal actions. This is not a common or pervasive problem. If this scenario did arise, there are several avenues to refuse an order without repercussions. These include, but are not limited to, using the UCMJ, and the APA Code of Ethics as it is currently written.

Posted by: Maria Aviles  
Representing: Individual  
Date Edited: 03/17/2009

Comments:

I am a recently licensed military psychologist and as such the APA Ethics code, in its current form, has served as a guide in my training, clinical work and consultations. In changing the verbiage of the code in a manner not reflective of the unique mission of those who function within the military and are voluntarily sworn to uphold the US Constitution, the APA will be forcing the military and its psychologist to take a stand either way. Any changes made to the code should reflect the experience of those who have worked in situations where human rights could have been compromised. This opinion does not reflect the opinion or position of the DoD.