KEEPING UP THE GOOD WORK: A PRACTITIONER'S GUIDE TO MENTAL HEALTH ETHICS

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Professional Resource Exchange, Inc.
Sarasota, Florida

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PREFACE

Although mental health practice has never been simple or stress-free, it seems to many of us that the strains are increasing and that the role of mental health practitioners is becoming more complicated, for a number of reasons. First, practitioners are continually faced with the pressures of economic survival, such as receiving third-party reimbursement, collecting from clients, and so on. Compounding this is the recent trend toward "managed care" - health maintenance organizations, preferred provider arrangements, and other alternatives to more traditional forms of reimbursement. Second, the aftermath of such legal decisions as *Tarasoff* has placed practitioners in a quandary regarding who their clients are and to whom they may be obligated. For example, if we report a potentially dangerous client, we run the risk of being held liable for breaking confidentiality. If we fail to report, we run the risk of being held liable for not protecting the public. Significant increases in malpractice-insurance premiums provide evidence of a more litigious society, and suggest that the level of paranoia among professionals may be at least partly justified. Such challenges have complicated the already difficult task of understanding and modifying human behavior.

When confronted by this multiplicity of demands and obligations, practitioners unfortunately may neglect to pay adequate attention to the ethical standards and values that should guide their practice. Instead, we may compromise or confuse such standards in the face of more immediate practical, financial, or legal considerations. The practice of giving a client a diagnosis because it is reim-

bursable by insurance companies; accepting an individual as a client, even though one has no demonstrable competence in treating the problem presented; and "ethics" workshops that are in reality aimed at avoiding lawsuits are all examples of situations in which ethical considerations are sacrificed for the sake of other requirements. Even in the best circumstances, the ethical course of action is often not easy or clear-cut.

Our motivation for writing this book was to help clinical practitioners understand and apply ethical principles in their practices. The various topics we cover represent those areas of professional practice where ethical concerns are dominant or where practitioners commonly misunderstand their ethical obligations or options.

We are aware that much of what has been written concerning professional ethics has been so general and theoretical that it is difficult for the practitioner to apply. In response to this limitation, we have attempted to apply solid ethical principles to the practical problems professionals face daily. While many, if not most, ethical problems defy hard and fast rules, several chapters in this book present relevant questions or guidelines that practitioners should consider in making a decision. The guidelines aim to focus the reader's attention on relevant issues and aid in decision making. Some of what we have written may seem to simply represent common knowledge or good judgment. Nonetheless, much "common knowledge" is overlooked in the course of a busy practice. We hope that by reading and thinking about these issues, practitioners will be more deliberate in their practical decisions. We have also tried to maintain a helpful and positive attitude. Such an orientation reflects our feeling that the vast majority of mental health professionals sincerely want to provide ethical services, as well as make a reasonable living and avoid lawsuits.

This is not a book on legalities, although legal issues will be considered where appropriate in the light of the ethical issue being discussed. This is not a book on professionalism, although there are numerous occasions when making ethical decisions will bear upon aspects of professionalism. Nor is this a book on clinical strategies, although making ethical decisions clearly has a substantial effect on practitioners' clinical strategies. Our hope, rather, is that in making clinical decisions of various sorts, readers will consider not only what is legally, practically, and clinically justified, but also what is ethical.

Thus, we hope that through reading this book, practitioners will integrate higher levels of ethical behavior into their practices.

Further, this is not a book written solely for psychologists, despite the fact that both of the authors are psychologists. Rather, we address this work to all clinical practitioners in the mental health professions. Although there are certain distinct differences in training, expertise, and prerogatives among the various professions, in practice there are many more similarities than differences. All of the mental health disciplines share a sense of professionalism, a duty to provide for the welfare of clients or patients, and a commitment to improving standards of practice, among other things. We hope that this book will be useful both in graduate coursework and in professional development, to social workers, psychiatrists, marriage and family therapists, and other mental health workers in addition to psychologists.

It would be unethical for us to fail to acknowledge with gratitude the contributions of many people to the successful completion of this book. First, we wish to thank Rob Showell and Brenda Goates, our indefatigable typists, who labored with us through many revisions of this manuscript. We also wish to acknowledge the help and considerate prodding of our publishers Peter Keller and Larry Ritt. Thanks are due as well to Samuel Knapp for his constructive and helpful review of the manuscript. We dedicate this book to our families - Rudy and Gerda Haas, Abby Gottsegen, Bea and Phelon Malouf, Molly Malouf, and Emily Malouf for their support and love during this process.

TABLE OF CONTENTS

CHAPTER 1: THE NATURE OF PROFESSIONAL ETHICS

This chapter provides a brief discussion of the theory and philosophy underlying the practice of professional ethics. It deals with three questions: What is professional ethics? What makes an action ethical? Are there different types of ethical obligations?

WHAT IS ETHICS?

One useful method for distinguishing ethics from other major standards for determining whether an action is right, good, or proper is to contrast it with those frameworks. Law (especially criminal law) and etiquette can be thought of as domains similar to ethics, since each focuses on aspects of proper or good behavior and each specifies penalties for deviation.

Although each set of standards is in some respects the consensus of the society or culture that promotes it, moral frameworks are (or should be) developed largely through rational processes; legal standards, on the other hand, are primarily developed through political processes; while norms of etiquette are developed, for the most part, by historical precedent.

Ethical standards, in theory at least, focus on behavior and on motivations that aim at the highest ideals of human behavior. Criminal law, in contrast, focuses primarily on behavior that may harm other members of the society, and etiquette focuses on behavior that establishes one's standing within a subgroup.

Actions that violate moral or ethical standards can result in censure, guilt, or social criticism. Illegal behavior,

on the other hand, results in actual punishment, at least in theory; impolite behavior results in social ostracism, or perhaps mild social criticism.

In the view of many moral philosophers, ethics is distinguished by three main features: (a) it is based on *principles*; (b) the principles have *universality* (i.e., could be applied universally); and (c) proper behavior may be deduced from the principles by *reasoning*. Thus, ethics proper should involve adherence to a consistent set of principles assumed to be relevant for all actors in similar situations, which result (deductively) in obligations to take particular actions.

Two relevant facts follow from this. First, professional ethics in psychology is not pure ethics, but rather a combination of ethics, law, and etiquette; and second, no existing ethical theory (especially no theory of professional ethics) meets the standard set forth above. Thus, we are dealing with a somewhat ambiguous, evolving topic.

THE NATURE OF PROFESSIONAL ETHICS

Although some may argue that professional ethics are distinct from general moral obligations (Beauchamp & Childress, 1979), professionals (whether psychologist, psychiatrist, architect, lawyer, or marriage and family therapist) take on special duties to persons who enter professional relationships with them. Legally, the special obligations of the professional are known as *fiduciary*. This term denotes the special duty to care for the welfare of one's clients or patients. The fact that the mental health practitioner is in a fiduciary relationship with clients implies that there are special ethical obligations. One example is loyalty; the psychotherapist cannot simply decide that he or she is no longer interested in treating a particular patient, because this would constitute abandonment. This standard of loyalty is higher than that to which the average citizen is held when assisting someone in need.

THE NATURE OF ETHICAL ACTS

As noted above, acts are generally considered to be ethical if they have the following characteristics: First, they are *principled*; that is, the actor must be able to justify his or her actions in the light of some specific, generally accepted moral principles (e.g., honesty, duty to

avoid harming others, respect for human dignity, preservation of freedom). Second, the action must be a *reasoned* outcome of consideration of the principles. This relates to the notion of free will in moral responsibility; that is, the actor is assumed to be capable of choice and thus responsible for basing his or her actions on ethical principles. Third, the action must be *universalizable*; that is, the actor must be able to recommend that others in similar situations do the same thing.

Although the foregoing suggests that the inherent *features* of certain acts denote them as ethical, the question of their *consequences* can also be raised in this regard. The principle of teleology or utilitarianism indicates that an action is ethical if it results in production of more good than harm, or as Bentham (1863/1948) phrased it in his famous maxim, produces "the greatest good for the greatest number." This principle has been criticized by ethical theorists because it may lead to "the ends justifying the means." Such criticisms of teleology frequently are based on deontological principles.

Deontology, a contrasting dimension on which to evaluate the ethical quality of actions, posits that actions are ethical if they adhere to some primary moral characteristic. For example, in early versions of medical ethics, the preservation of life was the primary ethical principle. Thus, an action that was intended to preserve life was ethical regardless of what other consequences it produced.

VARIETIES OF ETHICAL OBLIGATIONS

Ethical obligations can be more or less explicit and can constitute either the minimally acceptable standard or the ideal to which the ethically responsible practitioner aspires. Minimal standards (the "floor" of ethics) are known as mandatory ethical obligations. Ideals (the "ceiling" of ethics) are known as aspirational obligations (Gerts, 1981).

Generally, one can be criticized or punished for violating mandatory obligations, whereas one is typically not praised for upholding them. Conversely, it is much less common for individuals to be censured or punished for violating aspirational obligations, and much more common for them to be praised for upholding them. In colloquial terms, mandatory obligations can be thought of as "thou shalt nots," while aspirational obligations can be thought of as "thou shalts." For example, the *Ethical Prin-*

ciples of Psychologists (American Psychological Association, 1981a) has as one of its mandatory ethical obligations the duty to refrain from endorsing commercial products. This injunction is based on the notion that it is important to maintain the scientific objectivity of the profession. This can be seen as a "thou shalt not." It would be remarkable for a psychologist to be praised for avoiding product endorsements; on the other hand, it is quite likely that such a practitioner would be censured for participating in them. Conversely, the principle embodied in the *Ethical Principles of Psychologists* to "promote human dignity" can be seen as an aspirational ethical obligation. Thus, it would be unusual for a practitioner to be censured for "failing to promote human dignity," while it would be much more common for a practitioner who exemplified exceptional ability to promote human dignity to be praised for this.

It is important not to confuse aspirational and mandatory obligations. If one believes that aspirational obligations are in fact mandatory (i.e., mistakes the ceiling of ethics for the floor), one runs the risk of feeling hopelessly inadequate as an ethical practitioner. This approach is most commonly seen among graduate students who are first exposed to education in professional ethics. They begin to believe that their obligations are so massive and overwhelming as to prevent them from ever functioning effectively as clinicians. Thus, the practice of ethical service as a mental health practitioner demands that one understand that aspirational obligations should be kept continually in mind, while not becoming so burdensome as to prevent a sense of satisfaction in one's work.

Conversely, one can confuse mandatory with aspirational obligations (i.e., mistake the floor for the ceiling). In such cases, the practitioner believes that even the explicitly stated prohibitions in his or her ethical code are simply ideals to be aspired to; failure to uphold these standards is seen as justified if one made a "good effort." This approach can be a form of rationalization for failure to exert the considerable self-discipline required to act in a professionally responsible manner.

It is also useful to note that ethical obligations leave a tremendous amount of latitude to the judgment of the practitioner. This is as it should be, since, as noted above, ethical behavior is based in large part on the choices made by the practitioner.

CHAPTER 2: A FRAMEWORK FOR ETHICAL DECISION MAKING

The process of providing ethically appropriate and clinically sound services requires constant decision making. These deliberations about the ethically appropriate course of action may be excruciating in their detail, or quite fleeting, incorporated almost automatically in professional choices. The central ethical aspects of a particular problem may be immediately evident or highly subtle, and the relevant professional standards may be clear-cut in their implications for action or frustratingly vague.

The purpose of this chapter is to present an explicit framework for ethical decision making. This framework is not intended to be rigorously obeyed each time an ethical question arises. Rather, it is an attempt to make explicit what should "naturally" occur in the course of deciding on an ethically appropriate action in practice. Generally, the practitioner's intuitive sense of the right decision (assuming proper training in competent professional service) will facilitate the decision-making process. However, as the ethical dimensions of practice become increasingly important and complex, attending to less obvious aspects of the decision-making process becomes vital.

In what follows, we briefly summarize the major "information gathering" aspects of the process of making ethical decisions; we then present a five-stage decision-making process and describe its possible uses.

PHASES OF INFORMATION GATHERING

This section describes three domains in which the practitioner must gather information before making a decision. Each area of information gathering can be dealt with in greater or lesser detail. One's information gathering may be as simple as mentally reviewing the relevant aspects of the situation; or it may be as complex as reviewing the literature, consulting with colleagues, and requesting professional opinions from philosophers, lawyers, or others. Briefly, the clinician must identify three elements before being able to make an ethical decision: (a) the nature of the problem; (b) the identities and preferences of those persons who have a legitimate stake in the outcome of the problem (the "stake-holders"); and (c) the relevant professional and legal standards (if any) that bear on the case at hand. More detailed discussion of each of these domains follows.

IDENTIFYING THE ETHICAL PROBLEM

The first question in the initial analysis of a case is: What makes this an ethical dilemma? Not all problems are ethical; some are simply technical. For example, a psychologist may wish to determine the best method for treating migraine headaches. This is a technical decision and not (unless unusual circumstances exist) an ethical one. Conversely, deciding whether or not to inform the fiancee of a patient that her intended has episodic rage reactions *does* involve an ethical decision. The key questions for the practitioner are: First, is there an ethical problem or problems? Second, if more than one ethical problem exists, which is the most important? With regard to this second issue, the tendency to proliferate dilemmas is always present. If possible, it is helpful to reduce the ethical dimensions of a situation to one or two primary ethical questions.

IDENTIFYING LEGITIMATE STAKE-HOLDERS

In the ideal case (which almost never exists), the only parties legitimately concerned with the outcome of an ethical dilemma would be the practitioner and the client. In practice, however, more parties are typically involved. Increasingly, the party paying for mental health services

is not the party receiving them. Such situations include cases in which the clinician is employed by an institution to render services, services are paid for by a third party, or a third party legitimately orders professional services to be performed. It is important for the clinician to be clear about who has a legitimate right to be taken into account in making the decision. Once the identity of the stake-holders has been determined, some attempt must be made to ascertain their preferences.

In some situations, the problem is of such magnitude that parties not directly involved in contracting for the service have a legitimate stake in the outcome as well. It is at times essential to consider the interests of future members of the same class of consumer, unidentifiable members of society who may be affected by the outcome of the case, the practitioner's profession as a whole (and its image in the eyes of the public), and - most broadly - the general social climate in a particular society.

Thus, for example, decisions to breach or not to breach confidentiality may in part focus on the public's general level of trust in the mental health professions. Likewise, the decision to deceive or not to deceive a particular consumer about diagnosis or treatment plan may contribute to the general public distrust of professionals, or a generally lowered level of respect for individuals in society.

The foregoing should also imply that clinicians are among the legitimate stake-holders in the delivery of mental health services. This implies that the practitioner's preferences must be taken into account as well. Even though ethical decision making is sometimes presented as a purely cognitive or rational activity, it is important not to ignore these preferences. There is a strong emotional or aesthetic component to ethical decisions. This can lead to situations in which a practitioner deduces from the applicable principles that a particular course of action is mandated, but feels that it would not be "right" to engage in it.

IDENTIFYING RELEVANT STANDARDS

As mental health practice, applied philosophy, and legal theory have increasingly focused on the ethics and standards of practice, codes, standards, and precedents have emerged that mandate particular actions in particular situations. These precedents or standards may not

always be clear-cut; however, once they exist, the responsible practitioner must have a good reason for *not* adhering to them. Frequently, the existing standards are vague in their specifications for action. This allows the practitioner to decide what the range of choices consistent with a given standard might be. For example, at the broadest level, the *Ethical Principles of Psychologists* (American Psychological Association, 1981a) mandates that psychologists act to promote human welfare. The literal interpretation of this varies with the situation and with the specifics of the case.

One should not fear consultation on questions of relevant standards. It is often unclear which, if any, existing professional standard bears on a specific case; consulting with experienced colleagues or experts in the area may help clarify the situation.

THE PROCESS OF ETHICAL DECISION MAKING

Once practitioners have gathered enough information to adequately identify the ethical nature of the problems that face them, the legitimately involved parties, and the existing standards, they are in a position to begin arriving at a decision. This section describes a sequential process of establishing that an ethical decision has been made. It draws on a number of sources, including material by Rest (1982), Jonsen, Siegler, and Winslade (1982), and Candee (1985). In the most general terms, this ethical decision-making framework rests on three underlying presumptions: the dignity and free will of the individual (autonomy); the obligation of professionals to respect the existing standards and expectations of the society that legitimizes their activities (responsibility); and the duty to avoid special or self-serving interpretations or situations (universality). In its simplest form, the framework is presented as a flow chart in Figure 1 (p. 9). Discussions of various phases of the flow chart follow.

DOES A RELEVANT PROFESSIONAL, LEGAL, OR SOCIAL STANDARD EXIST?

As implied in the preceding section, this question obligates the psychologist to engage in literature review and/or consultation with respected colleagues. The nature

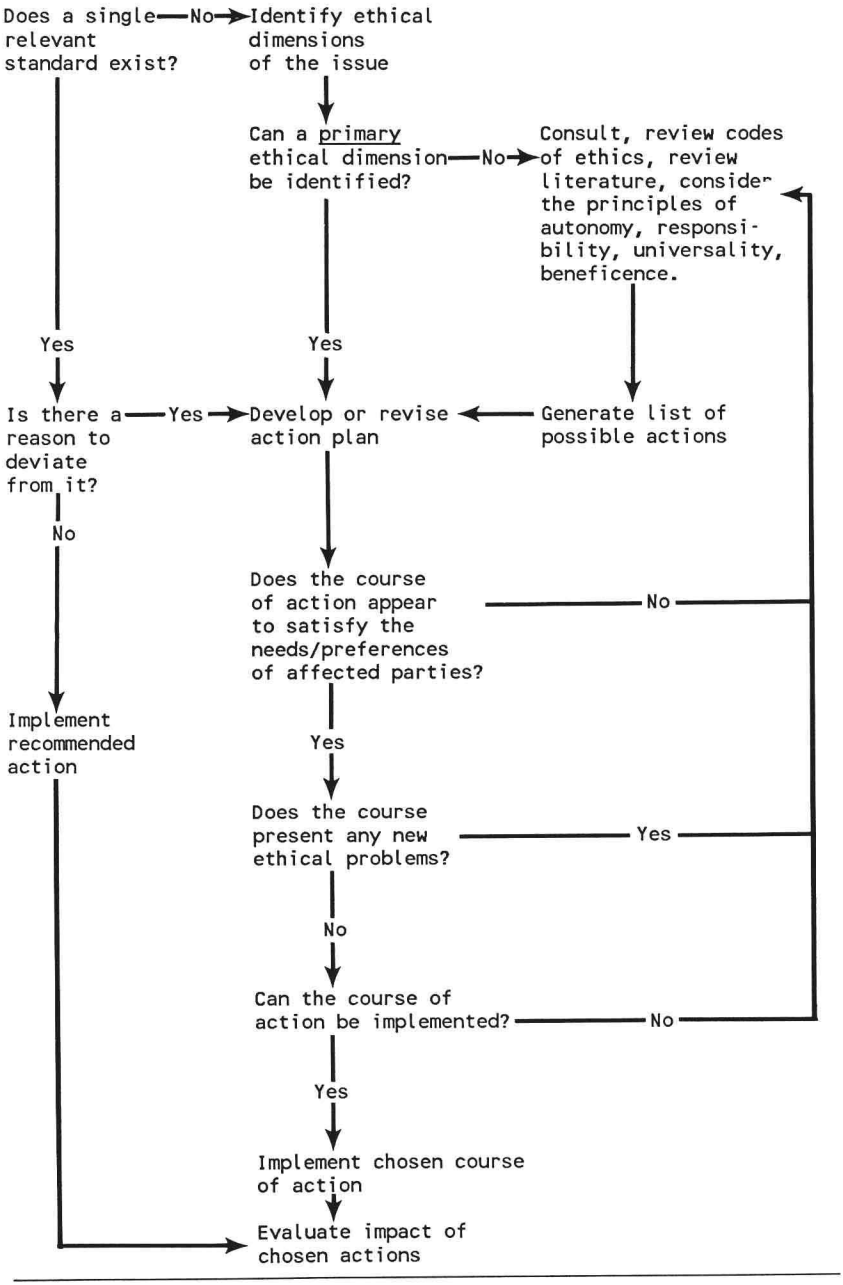

Figure 1. The Decision-Making Flow Chart.